



Town of Hilton Head Island  
**TOWN COUNCIL MEETING**  
Tuesday, March 2, 2021, 4:00 p.m.  
**AGENDA**

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In accordance the Town of Hilton Head Island Municipal Code § 2-5-15, this meeting is being conducted virtually and can be viewed on the [Town of Hilton Head Island Public Meetings Facebook Page](#) or the [Beaufort County Channel](#) as well as Hargray channels 9 and 113 and Spectrum channel 1304.

1. **Call to Order**
2. **FOIA Compliance:** Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.
3. **Pledge to the Flag**
4. **Invocation – Brett Myers, Sr. Pastor, First Baptist Church, Hilton Head Island**
5. **Approval of the Agenda**
6. **Approval of the Minutes**
  - a. Regular Meeting – February 16, 2021
7. **Report of the Town Manager**
  - a. COVID-19 Update – Dr. Jane Kelly, Assistant State Epidemiologist
  - b. Items of Interest
8. **Reports from the Members of Council**
  - a. General Reports from Council
  - b. Report of the Community Services & Public Safety Committee – Councilman Harkins
  - c. Report of the Public Planning Committee – Councilman Ames
  - d. Report of the Finance & Administrative Committee – Councilman Lennox
9. **Proclamations/Commendations - NONE**
10. **Appearance by Citizens**

*Citizens who wish to address Town Council during the meeting by phone must contact the Town Clerk at 843.341.4701 no later than **12:00 p.m. the day of the meeting**. Citizens speaking during the meeting will limit their comments to no longer than three (3) minutes and will conduct themselves in a manner appropriate to the decorum of the meeting, refraining from the use of profane, abusive, threatening, or obscene language.*

## **11. Unfinished Business**

### **a. Second Reading of Proposed Ordinance 2021-04 – Zoning Map Amendments – 30 Folly Field Road**

Second Reading of Proposed Ordinance 2021-04 to amend Title 16 the “Land Management Ordinance” of the Municipal Code of the Town of Hilton Head Island, South Carolina, by amending Section 16-1-107, the Official Zoning Map with respect to the certain 1.5 acre parcel located at 30 Folly Field Road, identified as PIN R511 009 000 1196 000, to change the existing Zoning from Resort Development (RD) to Parks and Recreation (PR).

### **b. Second Reading of Proposed Ordinance 2021-05 – CIP Budget Amendments**

Second Reading of Proposed Ordinance 2021-05 to amend the budget for the Town of Hilton Head Island, South Carolina, for the fiscal year ending June 30, 2021; to provide for the expenditures of certain funds; to allocate the sources of revenue for the said funds; and to provide for severability and an effective date.

## **12. New Business**

### **a. First Reading of Proposed Ordinance 2020-23 – Turtle Protection**

First Reading of Proposed Ordinance 2020-23 to amend Chapter 5 of Title 8 (Beaches, Waterways, Recreational Areas, and Arts), of the Municipal Code of the Town of Hilton Head Island, South Carolina; to amend Section 8-5-111, Definitions; to amend Section 8-5-112, Purpose; to delete Section 8-5-113, New Development; to add Section 8-5-113, Standards for New Development; to delete Section 8-5-114, Exemptions for New Development; to add Section 8-5-114, Exemptions; to delete Section 8-5-115, Existing Development; to add Section 8-5-115, Standards for Existing Development; to delete Section 8-5-116, Publicly Owned Lighting; to amend Section 8-5-117, Enforcement and Penalty; and providing for severability and an effective date.

### **b. First Reading of Proposed Ordinance 2021-01 – Historic Mitchelville Freedom Park MOU Renewal & Lease Amendments**

First Reading of Proposed Ordinance 2021-01 authorizing the execution of an updated Memorandum of Understanding and Amended Lease with Historic Mitchelville Freedom Park, Inc., related to real property owned by the Town of Hilton Head Island, South Carolina, pursuant to the authority of S.C. Code Ann. Sec. 5-7-40 (Supp. 2012), and Sec. 2-7-20 Municipal Code of the Town of Hilton Head Island, South Carolina, (1983); and providing for severability and an effective date.

### **c. First Reading of Proposed Ordinance 2021-06 – Calculation of Height & Flood Zone Standards LMO Amendments**

First Reading of Proposed Ordinance 2021-06 to amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, the Land Management Ordinance (LMO), Chapters 5 and 10. These amendments, commonly referred to as *Flood Map LMO Amendments* as noticed in the Island Packet on *January 17, 2021*, include changes that modify the Flood Zone Standards for consistency with the March 23, 2021 Flood Insurance Rate Maps and modify the Rule of Measurement for the calculation of building height, as described in Exhibit A to this ordinance, and providing for severability and an effective date.

**d. First Reading of Proposed Ordinance 2021-07 – Revisions to Title 15, Chapter 9**

First Reading of Proposed Ordinance 2021-07 to amend Title 15 Chapter 9 of the Municipal Code of the Town of Hilton Head Island, South Carolina, to update specific provisions related to Flood Damage Controls. This amendment includes revised language and defined terms to be consistent with the National Flood Insurance Program Regulations 44 CFR Parts 59 and 60, and providing for severability and an effective date.

**e. Consideration of a Resolution – Encroachment Agreement**

Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina authorizing the Town Manager to execute an Encroachment Agreement with Santee Cooper in coordination with Central Electric Cooperative and Palmetto Electric Cooperative to encroach onto the Power Line Easement located on Town-owned Parcel R520 012 00C 0002 0000.

**f. Consideration of a Recommendation – Ford Shell Ring Joint Ownership & Operating Agreement**

Consideration of a Recommendation to Town Council from the Community Services and Public Safety Committee, authorizing the Town Manager to execute a Joint Ownership and Operating Agreement related to development and operation of the Ford Shell Ring property.

**g. Consideration of a Recommendation – Summit Drive Re-Alignment Project**

Consideration of a Recommendation to Town Council from Town staff authorizing the Town Manager to negotiate and enter into agreements with Beaufort County regarding the Summit Drive Re-Alignment project and long-term commitment to provide solid waste and recycling service at the Summit Drive Convenience Center.

**13. Executive Session**

**14. Possible actions by Town Council concerning matters discussed in Executive Session**

**15. Adjournment**

Public comments concerning agenda items can be submitted electronically via the [Town's Virtual Town Hall Portal](#). The portal will close at **2:00 p.m.** the day of the scheduled meeting. All comments submitted to the portal will be provided to Town Council for review and made part of the official record.



Town of Hilton Head Island  
**TOWN COUNCIL**  
Tuesday, February 16, 2021 at 4:00 p.m.  
**MEETING MINUTES**

**Present from Town Council:** John J. McCann, *Mayor*; Bill Harkins, *Mayor Pro-Tempore*; David Ames, Tamara Becker, Alex Brown, Tom Lennox, Glenn Stanford, *Council Members*

**Present from Town Staff:** Josh Gruber, *Interim Town Manager*; Shawn Colin, *Interim Deputy Town Manager*; Angie Stone, *Interim Deputy Town Manager*; John Troyer, *Finance Director*; Jennifer Ray, *Interim Director of Community Development*; Teri Lewis, *Deputy Director of Community Development*; Jeff Buckalew, *Town Engineer*; Nicole Dixon, *Development Review Administrator*; Jayme Lopko, *Senior Planner*; Tyler Newman, *Senior Planner*; Missy Luick, *Senior Planner*; Krista Wiedmeyer, *Exec. Assist/Town Clerk*

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**1. Call to Order**

Mayor McCann called the meeting to order at 4:00 p.m.

**2. FOIA Compliance:** Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.

**3. Pledge to the Flag**

**4. Invocation – Rabbi Brad Bloom, Congregation Beth Yam Synagogue**

Rabbi Bloom delivered the invocation.

**5. Approval of Agenda**

Mr. Stanford moved to approve the agenda. Mr. Ames seconded. By way of roll call, the agenda was approved by a vote of 7-0.

**6. Approval of Minutes**

- a. **Regular Meeting – January 19, 2021**
- b. **Special Meeting – February 3, 2021**

Mr. Harkins moved to approve the minutes as noted on the agenda. Mr. Ames seconded. By way of roll call, the minutes were approved by a vote of 7-0.

**7. Report of the Town Manager**

**a. Board of Zoning Appeals Update – Patsy Brison, Board Chair**

Chairperson Brison gave an update to the members of Town Council concerning the last six months of business handled by the Board.

**b. Cross Island Parkway Administrative Building – Letter to the South Carolina Department of Transportation**

Mr. Gruber updated Town Council of the recent discussions with the SCDOT about the closing of the Cross Island Toll later this year. He stated that a formal request from the Town is required in order for the Town to take ownership of the administrative building. Mr. Gruber requested authorization to send the letter enclosed in the agenda packet to the SCDOT. Council agreed without objection.

## **7. Report of the Town Manager (cont.)**

### **c. Items of Interest**

Mr. Gruber reviewed and reported on a number of items of interest from the Town.

## **8. Reports from Members of Council**

### **a. General Reports from Council**

Mr. Lennox reported that he and Mr. Gruber represented the Town at the Chamber Marketing Council meeting. At the session, they discussed the pandemic impact in 2020, proposed results for 2021, and proposed goals for 2022. A draft marketing DMO plan should be delivered in the coming week.

Mr. Stanford reported that at the recent meeting of the Policy Committee of the Lowcountry Area Transportation Study, they discussed various matters. One of those items being an update on the US 278 Corridor Project from Craig Winn. Mr. Stanford said that Mr. Winn reported that the pandemic had not slowed the project, in particular with continued development of the project. Mr. Stanford that stakeholder meetings have continued as have others. He reported that the SCDOT has come up with plans as they relate to the Stoney Community, which include things like lighting and flags which will highlight the community. Other updates were discussed including that the design of the bridges were 70% complete. Mr. Ames asked Mr. Stanford about the design of the bridges being 70% complete. Discussion continued amongst Council regarding the project. Mr. Gruber reminded Council that they will have time at the upcoming workshop on March 10, 2021 to continue the discussion.

### **b. Report of the Community Services & Public Safety Committee – Bill Harkins**

Mr. Harkins reported that the Committee would be meeting on February 22, 2021 where they would continue the discussion regarding the Sandalwood Apartments. He said that he had asked Ms. Childress from the Beaufort Housing Authority to participate in the meeting, providing information on potential replacement of the existing structures.

### **c. Report of the Public Planning Committee – David Ames**

Mr. Ames reported that the Committee met on February 3, 2021, where they continued the discussion on the Sea Turtle Protection Ordinance. He said he anticipated seeing the item on the agenda for the March 2, 2021 Town Council meeting.

### **d. Report of the Finance & Administrative Committee – Tom Lennox**

Mr. Lennox reported that the Committee met earlier in the day where they received a financial update from the Finance Director, Mr. Troyer. He said the Committee also had a discussion regarding the parking for Volunteers in Medicine, with a recommendation coming forward to Town Council at a later date.

## **9. Proclamations/Commendations – NONE**

## **10. Appearance by Citizens**

Becky Cederholm: Addressed the members of Town Council on various Town matters.

Andrea Norman and Carin Vaughn: Addressed the members of Town Council urging them to consider and approve the installation of speed humps in the Point Comfort area.

## 11. Unfinished Business

### a. **Second Reading of Proposed Ordinance 2020-36 – Workforce Housing LMO Amendments**

Second Reading of Proposed Ordinance 2020-36 to amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, the Land Management Ordinance (LMO), Chapters 3, 4, and 10. These Amendments commonly referred to as *Workforce Housing LMO Amendments* as noted in the Island Packet on *July 19, 2020*, including changes that add Workforce Housing as a Permitted by Condition use in the RM-4 Zoning District and creates a Density Bonus Incentive, and providing for severability.

Mr. Harkins moved to approve. Mr. Ames seconded. Council had a brief discussion on the item. By way of roll call the motion carried by a vote of 6-1, Mrs. Becker opposing.

## 12. New Business

### a. **Consideration of the Proposed Amendments to the LMO – 30 Folly Field Road**

Consideration of the proposed amendments to the Land Management Ordinance of the Municipal Code of the Town of Hilton Head Island, South Carolina, by amending Section 16-1-107, the Official Zoning Map with respect to the certain 1.5-acre parcel located at 30 Folly Field Road, identified as PIN R500 009 000 1196 0000, to change the existing Zoning from Resort Development (RD) to Parks and Recreation (PR).

Mr. Harkins moved to approve. Mr. Ames seconded. With a brief discussion and by way of roll call, the motion carried by a vote of 7-0.

### b. **Consideration of the Proposed Amendments to the LMO – 95 Mathews Drive**

Consideration of the proposed amendments to the Land Management Ordinance of the Municipal Code of the Town of Hilton Head Island, South Carolina, by amending Section 6-1-107, the Official Zoning Map with respect to the certain 5.26-acre parcel located at 95 Mathews Drive, identified as PIN R511 008 000 192A 0000, rezoning the parcel from Community Commercial (CC) to Light Commercial (LC).

Mr. Gruber informed the members of Council that the applicant requesting the change had formally withdrawn their application.

### c. **First Reading of Proposed Ordinance 2021-05 – CIP Budget Amendments**

First Reading of Proposed Ordinance 2021-05 to amend the budget for the Town of Hilton Head Island, South Carolina, for the fiscal year ending June 30, 2021; to provide for the expenditures of certain funds; to allocate the sources of revenue for the said funds; and to provide for severability and an effective date.

Mr. Harkins moved to approve. Mr. Ames seconded. Staff provided clarification to the questions posed, specifically clarifying that the projects noted within the budget amendments were previously reviewed and approved by Town Council and that the budget amendments provide the adequate funding to begin those projects. Mr. Brown requested that Council as a body, consider amending the amendments, removing the Chaplin Linear Park project from the discussion. Staff expressed continued recommendation of approving the amendments as proposed and presented to Council. Upon conclusion of the discussion and by way of roll call, the motion carried by a vote of 6-1, Mr. Brown opposing.

## **12. New Business (cont.)**

### **d. Consideration of a Recommendation –Request for Speed Humps & Traffic Calming Policy**

Consideration of a Recommendation to Town Council from the Community Services and Public Safety Committee recommending the Town of Hilton Head Island pursue a Town-sponsored speed hump project on Point Comfort Road and adoption of a Traffic Calming Policy.

Mr. Ames moved to approve. Mr. Harkins seconded. After much discussion from Council about the inclusion of the proposed Traffic Calming Policy, Mr. Ames requested that it be removed from the current recommendation and discussed in greater detail at a Community Services and Public Safety Committee meeting. With the members of Town Council agreeing to such request, Mr. Ames updated and amended his original motion, with Mr. Harkins seconding. By way of roll call, the motion recommending the Town pursue a Town-sponsored speed hump project on Point Comfort Road, carried by a vote of 7-0. The proposed Traffic Calming Policy will be reviewed and considered at the March 22, 2021 Community Services and Public Safety meeting.

## **13. Executive Session**

Mr. Gruber stated that there was a need for Executive Session for: (a) Personnel Matters, discussion of appointments of members to Boards and Commissions, (b) Land Acquisition, discussion of negotiations incident to the proposed sale, lease, or purchase of property in the: (i) Northridge area, (ii) Palmetto Bay Road area, (iii) Squire Pope area, and (iv) Coligny area, (3) Legal Matters, receipt of legal advice related to pending, threatened, or potential claim related to: (i) ATAX funding, (ii) ArborNature, and (iii) Sandcastle by the Sea, and (4) Contractual Matters, discussion of negotiations incident to proposed contractual arrangements with Santee Cooper.

At 5:18 p.m., Mr. Harkins moved to enter into Executive Session for the reasons described by Mr. Gruber. Mr. Ames seconded. The motion carried unanimously.

## **14. Possible Actions by Town Council Concerning Matters Discussed in Executive Session**

At 7:04 p.m., Council returned from Executive Session with the following action.

Mr. Stanford moved to authorize the Town Manager or his designee to negotiate a contract with BIOS in accordance with the RFP and direction from Town Council. Mrs. Becker seconded. By way of roll call, the motion carried by a vote of 6-0, Mr. Harkins recusing himself.

Mr. Harkins moved to nominate Brian Turrisi for reappointment to the Beaufort County Airports Board as the Town of Hilton Head Island representative, for a two-year term beginning February 2021 and ending February 2023. Mr. Ames seconded. By way of roll call, the motion carried by a vote of 7-0.

## **15. Adjournment**

By unanimous vote, the meeting adjourned at 7:08 p.m.

**Approved: March 2, 2021**

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Krista M. Wiedmeyer, Town Clerk

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John J. McCann, Mayor



# Items of Interest

## March 2, 2021

### Town News

#### **Planning Award**

The Town was selected by the South Carolina chapter of the American Planning Association (SCAPA) for a planning project award. On February 17<sup>th</sup> at the SCAPA Winter Conference it was announced that Our Plan: 2020 to 2040 Comprehensive Plan for the Town of Hilton Head Island, was selected as the 2020 Outstanding Planning Project in the Large Urban category.

SCAPA planning awards recognize outstanding efforts and achievements that advance the art and science of planning in South Carolina. This award recognizes the contributions of volunteers and Town officials in the compilation of an engaging official document that represents the multidimensional Hilton Head Island community and provides a clear, aspirational direction for the future that will serve the Town for many years.

#### **Sea Pines Circle Paving**

The South Carolina Department of Transportation's contractor (APAC Southeast, Inc.) plans to conduct asphalt milling and paving operations on the Sea Pines Circle March 1 through March 3 (weather permitting). They will also be milling and paving the bypass lanes and the short connecting segments of William Hilton Parkway and Palmetto Bay Road, with all work to be completed by March 19 (weather permitting). This will be night time work, with no lane closure allowed between 9:00 PM and 6:00 AM. This is a state project and the Town is not contributing any funding; however we have recently been involved in the project coordination.

### Town Meetings

Public meetings are currently being conducted virtually. Please check the [Town's website](#) for all scheduled meetings.





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# TOWN OF HILTON HEAD ISLAND

## *Community Development Department*

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**TO:** Marc Orlando, ICMA~CM, *Town Manager*  
**VIA:** Jennifer Ray, ASLA, *Interim Community Development Director*  
**VIA:** Teri B. Lewis, AICP, *Deputy Community Development Director*  
**VIA:** Nicole Dixon AICP, CFM, *Development Review Administrator*  
**FROM:** Tyler Newman, *Senior Planner*  
**CC:** Shawn Colin, AICP, *Interim Deputy Town Manager*  
**DATE:** February 17, 2021  
**SUBJECT:** Proposed Ordinance 2021-04 - ZA-002487-2020 – 30 Folly Field Rd.

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Town Council reviewed the proposed zoning map amendment application at their meeting on February 16, 2021. At that meeting, Town Council made no changes to Proposed Ordinance 2021-04.

**AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND**

**ORDINANCE NO. 2021-#**

**PROPOSED ORDINANCE NO. 2021-04**

**AN ORDINANCE TO AMEND TITLE 16, "THE LAND MANAGEMENT ORDINANCE," OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, BY AMENDING SECTION 16-1-107, THE OFFICIAL ZONING MAP WITH RESPECT TO THE CERTAIN 1.5 ACRE PARCEL LOCATED AT 30 FOLLY FIELD ROAD, IDENTIFIED AS PIN R511 009 000 1196 0000, TO CHANGE THE EXISTING ZONING FROM RESORT DEVELOPMENT (RD) TO PARKS AND RECREATION (PR); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, on October 7, 2014, the Town Council did adopt a new Land Management Ordinance (LMO); and

**WHEREAS**, this zoning change would be compatible with surrounding land uses and neighborhood character, would not be detrimental to the public health, safety and welfare, and further, would be in conformance with the Land Management Ordinance and Comprehensive Plan; and

**WHEREAS**, the Planning Commission held a public hearing on January 20, 2021 at which time a presentation was made by staff and an opportunity was given for the public to comment on the proposed zoning map amendment application; and

**WHEREAS**, the Planning Commission, after consideration of the staff presentation and the criteria set forth in Section 16-2-103, voted 8-0-0 to recommend that Town Council approve the proposed zoning map amendment application with conditions; and

**WHEREAS**, after due consideration of said zoning map amendment application and the recommendation of the Planning Commission, the Town Council, upon further review, finds it is in the public interest to approve the proposed zoning map amendment application.

**NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND IT IS ORDAINED BY THE AUTHORITY OF THE SAID COUNCIL:**

**Section 1. Amendment.** That the Official Zoning Map of the Town of Hilton Head Island, as referred to in Section 16-1-107 of the LMO, be hereby amended as follows:

To modify the zoning designation of the certain 1.5 acre parcel located at 30 Folly Field Road, identified as pin R511 009 000 1196 0000, from Resort Development (RD) to Parks and Recreation (PR).

**Section 2. Severability.** If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall

be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**Section 3. Effective Date.** This Ordinance shall be effective upon its adoption by the Town Council of the Town of Hilton Head Island, South Carolina.

**PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2021.**

THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

\_\_\_\_\_  
John J. McCann, Mayor

ATTEST:

\_\_\_\_\_  
Krista Wiedmeyer, Town Clerk

Public Hearing: January 20, 2021  
First Reading: February 16, 2021  
Second Reading:

APPROVED AS TO FORM:

\_\_\_\_\_  
Curtis L. Coltrane, Town Attorney

Introduced by Council Member: \_\_\_\_\_



## **MEMORANDUM**

**TO:** Town Council

**FROM:** John Troyer, CPA, Director of Finance

**VIA:** Joshua A. Gruber, Interim Town Manager

**DATE:** February 17, 2021

**RE:** **Second Reading of Proposed Ordinance No. 2021-05, CIP Budget Amendment**

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**Recommendation:**

Staff recommends Town Council approve the second reading of Proposed Ordinance No. 2021-05 to amend the Capital Projects Fund budgets for the fiscal year ending June 30, 2021.

**There have been no changes since the First Reading.**

**AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND**

**ORDINANCE NO.**

**PROPOSED ORDINANCE NO. 2021-05**

**AN ORDINANCE TO AMEND THE BUDGET FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, FOR THE FISCAL YEAR ENDING JUNE 30, 2021; TO PROVIDE FOR THE EXPENDITURES OF CERTAIN FUNDS; TO ALLOCATE THE SOURCES OF REVENUE FOR THE SAID FUNDS; AND TO PROVIDE FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, Section 5-7-260 of the Code of Laws of South Carolina requires that a municipal council act by ordinance to adopt a budget and levy taxes, pursuant to public notice; and

**WHEREAS**, the Town Council did adopt the budget on June 16, 2020, and

**WHEREAS**, pursuant to the budget amendment policy as stated in the Town's annual budget document, the Town Council is desirous of amending the budget so as to provide for additional revenues, and the expenditures and certain other commitments from the Fund Balance and other revenue sources, as well as to correct budget appropriations for certain Capital Improvement Plan (CIP) projects in the Capital Projects Fund.

**NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND IT IS ORDAINED BY THE AUTHORITY OF THE SAID TOWN COUNCIL:**

Section 1 Amendment. The adopted 2021 fiscal year budget is amended to make the following changes as increases and decreases to the funds from prior years and to the projected revenue and expenditure accounts as shown as follows on attachment A.

Section 2 Severability. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3 Effective Date. This Ordinance shall be effective upon its enactment by the Town Council of the Town of Hilton Head Island.

**ORDINANCE NO.**

**PROPOSED ORDINANCE NO. 2021-05**

**PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF  
HILTON HEAD ISLAND ON THIS \_\_\_ DAY OF \_\_\_\_\_, 2021.**

\_\_\_\_\_  
John McCann, Mayor

ATTEST:

\_\_\_\_\_  
Krista Wiedmeyer  
Town Clerk

First Reading: \_\_\_\_\_  
Second Reading: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Curtis L. Coltrane  
Town Attorney

Introduced by Council Member:

\_\_\_\_\_

**ATTACHMENT A  
Capital Projects Fund Budget Amendment**

**Account Description**

<b>Revenues:</b>	<b><u>Amount</u></b>
Road Usage Fee	1,100,000
Hospitality Tax	150,000
Impact Fee	150,000
Real Estate Transfer Fee	625,000
TIF Tax	2,100,000
<b>Total Revenues</b>	<b><u><u>4,125,000</u></u></b>

<b>Expenditures:</b>	<b><u>Source of Funds</u></b>	<b><u>Amount</u></b>
<b><u>ROADWAY AND PATHWAY IMPROVEMENTS:</u></b>		
Realignment of Summit Drive	Road Usage Fee	600,000
Automobile Pl. to Dillon Road / WHP Corridor	Hospitality Tax	150,000
"	Impact Fee	150,000
Arrow Road Resurfacing	Road Usage Fee	500,000
 Total Roadway & Pathway Improvements Increase:		 <b><u><u>\$ 1,400,000</u></u></b>

<b><u>PARK DEVELOPMENT:</u></b>		
Chaplin Linear Park	TIF Tax	500,000
Shelter Cove Pathway & Parking Enhancements	TIF Tax	1,600,000
 Total Park Development Increase:		 <b><u><u>\$ 2,100,000</u></u></b>

<b><u>OTHER:</u></b>		
Demolition of Kingfisher Restaurant, Fairfield Square and Boat Repair Shop	Real Estate Transfer Fee	625,000
 Total Other Increase:		 <b><u><u>\$ 625,000</u></u></b>
 <b>Total Expenditures</b>		 <b><u><u>4,125,000</u></u></b>

**ORDINANCE NO.**

**PROPOSED ORDINANCE NO. 2021-05**

**ATTACHMENT A, CONT.**

The effects of this amendment for fiscal year 2021 are presented below.

	General Fund		Cap Proj Fund		Debt Service		Total Governmental Funds	
	Expenditures	Revenues & Transfers In	Expenditures, Transfers Out & Other Uses	Revenues & Transfers In & Other Sources	Expenditures, Transfers Out & Other Uses	Revenues & Transfers In	Expenditures, Transfers Out & Other Uses	Revenues & Transfers In & Other Sources
Current Balance	\$ 44,012,321	\$(44,348,956)	\$ 33,353,363	\$(33,353,363)	\$ 21,500,000	\$(21,500,000)	\$ 98,865,684	\$(99,202,319)
Amendment	-	-	4,150,000	(4,150,000)	-	-	4,150,000	(4,150,000)
Revised Balance	\$ 44,012,321	\$(44,348,956)	\$ 37,503,363	\$(37,503,363)	\$ 21,500,000	\$(21,500,000)	\$103,015,684	\$(103,352,319)
Enterprise Fund								
Stormwater Fund								
	Expenditures	Revenues & Transfers In						
	& Transfers Out	Transfers In						
Current Balance	\$ 7,776,066	\$(7,776,066)						
Amendment	-	-						
Revised Balance	\$ 7,776,066	\$(7,776,066)						





# TOWN OF HILTON HEAD ISLAND

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## *Community Development Department*

**TO:** Marc Orlando, *ICMA~CM, Town Manager*  
**VIA:** Jennifer Ray, *ASLA, Interim Community Development Director*  
**FROM:** Anne Cyran, *AICP, Senior Planner*  
**CC:** Shawn Colin, *AICP, Interim Deputy Town Manager*  
**DATE:** February 18, 2021  
**SUBJECT:** Proposed Ordinance 2020-23 – Sea Turtle Protection Ordinance

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### **Recommendation:**

The Public Planning Committee (PPC) recommends Town Council approve the proposed Sea Turtle Protection Ordinance. They met on February 3, 2021 to review the proposed Ordinance. The Committee voted 4-0-0 to forward the proposed Ordinance with revisions to Town Council with a recommendation of approval.

### **Summary:**

The proposed Ordinance updates the Town's existing sea turtle protection standards to reduce the number of sea turtle hatchling misorientations caused by artificial light. The proposed Ordinance requires all light fixtures visible from the beach to be shielded so the bulbs are not visible or to be turned off between 10:00 p.m. and 6:00 a.m. during sea turtle nesting season. Ambient light from shielded fixtures is permitted. It also requires all windows and glass doors in new development to have sea turtle friendly tinting or solar screens.

If approved, the Ordinance will take effect on May 1, 2021. Staff will work with all relevant parties to voluntarily bring properties into compliance with the new requirements.

### **Background:**

On January 24, 2019, the Public Planning Committee directed staff to discuss with the Sea Turtle Patrol their concerns about the existing Sea Turtle Protection Ordinance. Several factors reduced sea turtle hatchling success from 62% to 48% between 2014 and 2018. One factor was artificial light, which can cause sea turtle hatchling misorientation and subsequent death. Enacted in 1990, the existing Ordinance allows indoor artificial light from first floors and some outdoor lights to be highly visible from the beach.

The proposed Ordinance reflects discussion and input from the Committee and many community stakeholders, including property owners, rental companies, hotels, realtors, builders, Turtle Patrol, environmental groups and concerned citizens.

### **Attachments:**

- A) Proposed Ordinance 2020-23
- B) Existing Ordinance

ORDINANCE NO. 2021-\_\_

PROPOSED ORDINANCE NO. 2020-23

**AN ORDINANCE TO AMEND CHAPTER 5 OF TITLE 8, (BEACHES, WATERWAYS, RECREATIONAL AREAS, AND ARTS), OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; TO AMEND SECTION 8-5-111, DEFINITIONS; TO AMEND SECTION 8-5-112, PURPOSE; TO DELETE SECTION 8-5-113, NEW DEVELOPMENT; TO ADD SECTION 8-5-113, STANDARDS FOR NEW DEVELOPMENT; TO DELETE SECTION 8-5-114, EXEMPTIONS FOR NEW DEVELOPMENT; TO ADD SECTION 8-5-114, EXEMPTIONS; TO DELETE SECTION 8-5-115, EXISTING DEVELOPMENT; TO ADD SECTION 8-5-115, STANDARDS FOR EXISTING DEVELOPMENT; TO DELETE SECTION 8-5-116, PUBLICLY OWNED LIGHTING; TO AMEND SECTION 8-5-117, ENFORCEMENT AND PENALTY; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, The Town Council for The Town of Hilton Head Island, South Carolina finds that the Loggerhead sea turtle (*Caretta caretta*); the Leatherback sea turtle (*Dermochelys coriacea*); and Kemp's Ridley sea turtle (*Lepidochelys kempii*) are documented to nest or to have nested on the beaches of Hilton Head Island; and,

**WHEREAS**, The Town Council for The Town of Hilton Head Island, South Carolina finds that the Loggerhead sea turtle, the Leatherback sea turtle and Kemp's Ridley sea turtle are designated as endangered by the State of South Carolina in S. C. Code of Regulations 123-150, 123-150.1 and 123-150.2; and,

**WHEREAS**, The Town Council for The Town of Hilton Head Island, South Carolina finds that the Loggerhead sea turtle, the Leatherback sea turtle and Kemp's Ridley sea turtle are listed as threatened or endangered by the United States of America in 50 C. F. R. § 17.11; and,

**WHEREAS**, The Town Council for The Town of Hilton Head Island, South Carolina finds that the stated policy of the United States of America is to protect threatened and endangered species, including the Loggerhead sea turtle, the Leatherback sea turtle and the Kemp's Ridley sea turtle, as set out in the Endangered Species Act, 16 U. S. C. § 1531, et seq.; and,

**WHEREAS**, The Town Council for The Town of Hilton Head Island, South Carolina finds that the stated policy of the State of South Carolina is to protect threatened and endangered species, including the Loggerhead sea turtle, the Leatherback sea turtle and the Kemp's Ridley sea turtle, as set out in the South Carolina Non-Game and Endangered Species Conservation Act, S. C. Code Ann. § 50-15-10, et seq. (Supp. 2020); and,

**WHEREAS**, The Town Council for The Town of Hilton Head Island, South Carolina finds that artificial lighting at or near the beach where sea turtles nest can disorient nesting

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female sea turtles and also hatchling sea turtles, which is confirmed by the South Carolina Department of Natural Resources in published material available to the general public at “<https://www.dnr.sc.gov/seaturtle/lights.htm>” which reads in part:

When loggerhead hatchlings emerge from the shell, they are attracted to the blue and green wavelengths of light which are naturally reflected off the ocean through celestial light. They use this natural light cue to navigate from the nest towards the ocean. This same mechanism is used by adult females when nesting. If an artificial light source on the beach is brighter than the natural light, the hatchlings will head towards this artificial source. These artificial lights can be a direct source such as a beach front home’s exterior flood light or a street light; the artificial light can also be indirect, light pollution that creates a sky glow effect.

When a hatchling sea turtle is attracted away from the ocean towards a direct or indirect source of light, biologists describe this as a disorientation event. The hatchlings become disoriented and crawl away from the ocean towards the brightest light. During this disorientation event, hatchlings are more susceptible to nocturnal predators and desiccation. While crawling the wrong way on the beach, hatchlings exhaust valuable, limited energy stores needed to swim offshore. Hatchlings need energy once they reach the ocean to swim towards floating Sargassum seaweed found as far as 60 miles offshore. They use the seaweed as camouflage to protect them from predators. The seaweed is also home to small crustaceans that loggerhead hatchlings eat to replenish their energy.

**WHEREAS**, The Town Council for The Town of Hilton Head Island, South Carolina finds that there has been evidence of misorientation of adult nesting female sea turtles, and sea turtle hatchling on Hilton Head Island caused by artificial lighting at or near the beaches on Hilton Head Island; and,

**WHEREAS**, the Town Council of the Town of Hilton Head Island did previously adopt Chapter Five (5) of Title 8 of the Municipal Code of the Town of Hilton Head Island to regulate sea turtle protection; and,

**WHEREAS**, research on sea turtle nesting and hatchling habits has advanced considerably since the regulations were adopted in 1990; and

**WHEREAS**, Town Council desires to amend Chapter Five (5) Title 8 of the Municipal Code of the Town of Hilton Head Island to update and clarify sea turtle protection regulations.

**NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND IT IS HEREBY ORDAINED BY THE AUTHORITY OF THE SAID COUNCIL:**

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**NOTE: Underlined and bold-face typed** portions indicate additions to the Ordinance. ~~Stricken~~ portions indicate deletions to the Ordinance.

Section 1. Deletion. That Section 8-5-111 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby deleted as follows:

~~Sec. 8-5-111. Definitions.~~

~~For the purpose of this chapter, the following terms shall have the meanings set forth in this section:~~

- ~~(a) *Artificial light*: Any source of light emanating from a manmade device, including but not limited to, incandescent mercury vapor, metal halide, or sodium lamps, flashlights, spotlights, street lights, vehicular lights, construction or security lights.~~
- ~~(b) *Beach*: That area of unconsolidated material that extends landward from the mean low water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation (usually the effective limit of storm waves).~~
- ~~(c) *Floodlight*: Reflector type light fixture which is attached directly to a building and which is unshielded.~~
- ~~(d) *Low profile luminaire*: Light fixture set on a base which raises the source of the light no higher than forty eight (48) inches off the ground, and designed in such a way that light is directed downward from a hooded light source.~~
- ~~(e) *New development*: Shall include new construction and remodeling of existing structures when such remodeling includes alteration of exterior lighting.~~
- ~~(f) *Person*: Any individual, firm, association, joint venture, partnership, estate, trust, syndicate, fiduciary, corporation, group, or unit or federal, state, county or municipal government.~~
- ~~(g) *Pole lighting*: Light fixture set on a base or pole which raises the source of the light higher than forty eight (48) inches off the ground.~~
- ~~(h) *Solar screen*: Screens which are fixed installations and permanently project shade over the entire glass area of the window. The screens must be installed outside of the glass and must:
  - ~~(1) Have a shading coefficient of .45 or less; and~~
  - ~~(2) Carry a minimum five year warranty; and~~
  - ~~(3) Must have performance claims supported by approved testing procedures and documentation.~~~~
- ~~(i) *Tinted or filmed glass*: Window glass which has been covered with window tint or film such that the material has:
  - ~~(1) A shading coefficient of .45 or less; and~~
  - ~~(2) A minimum five year warranty; and~~
  - ~~(3) Adhesive as an integral part; and~~~~

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~~(4) Performance claims which are supported by approved testing procedures and documentation.~~

~~(j) *Shading coefficient*: A coefficient expressing that percentage of the incident radiation which passes through the window as heat.~~

~~(Ord. No. 90-13, § 1, 5-7-9~~

Section 2. Addition. That Section 8-5-111 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby added as follows:

**Sec. 8-5-111. – Definitions.**

**In this chapter, the following terms when capitalized shall have the meanings set forth in this section:**

- (a) Ambient Light: Means Artificial Light that is Visible From The Beach emanating from Light Fixtures with a Shield that are Visible From The Beach and from unshielded Light Fixtures and sources that are not Visible From The Beach.**
- (b) Artificial Light: Means the light originating from any human-made device or human activity.**
- (c) Beach: Means that area of unconsolidated material that extends landward from the mean low water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation (usually the effective limit of storm waves).**
- (d) Downward Directed: Means positioning of any Light Fixture so that the light from it is directed perpendicular to the ground.**
- (e) Existing Development: Means any construction authorized by building permit for which application was made on or before April 30, 2021, and any other related installation on the lot or parcel on which the structure is built.**
- (f) Floodlight: Means any reflector-type exterior Light Fixture that is attached directly to a building or pole and that does not have a Shield.**
- (g) Light Fixture: Means any housing for any Artificial Light source.**
- (h) Low Profile Luminaire: Means any Light Fixture set on a base which raises the bulb or other source of the light no higher than forty-eight (48) inches off the ground, and designed in such a way that light is Downward Directed from a light source that has a Shield.**
- (i) New Development: Means any construction authorized by building permit for which application was made on or after May 1, 2021, and any other related installation on the lot or parcel on which the structure is built.**
- (j) Opaque: Means any thing or material that blocks the passage of light through it.**
- (k) Sea Turtle Nesting Season: Means the period from May 1 through October 31 of each year.**

- (l) Security Light: Means an exterior Light Fixture that illuminates a portion of a structure or property that is intended to deter or detect intrusions or other criminal activity and for the safety of property owners and guests.**
- (m)Shield: Means an Opaque material covering the bulb, lamp, glowing lens, reflector or reflective surface of a Light Fixture so that the bulb, lamp, glowing lens, reflector or reflective surface is not visible except when viewed from directly underneath the Shield. For interior Light Fixtures, lampshades that cover the bulb, lamp, glowing lens, reflector or reflective surface of the lamp, whether or not made of Opaque material, qualify under this subsection as a Shield.**
- (n) Solar Screen: Means a type of screen intended to reduce the amount of Artificial Light passing through a glass window or door. A Solar Screen must have a manufacturer verified inside-to-outside light Transmittance Value of 0.45 (45%) or less.**
- (o) Tinted or Filmed Glass: Means glass that has been treated to reduce light transmittance. Tinted or Filmed Glass must have a manufacturer verified inside-to-outside light Transmittance Value of 0.45 (45 %) or less. Tinted or Filmed Glass cannot be dual-reflective or mirror finished.**
- (p) Transmittance Value: A measurement of the percentage of visible light that leaves the interior of a structure through glass windows or doors. This measurement is related to the absorbance of the applied material, rated by the manufacturer.**
- (q) Visible From The Beach: Means capable of being observed by or within the line of sight of a pedestrian walking or standing on the Beach.**

(Ord. No. 90-13, § 1, 5-7-90)

Section 3. Amendment. That Section 8-5-112 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby amended as follows:

Sec. 8-5-112. – Purpose.

The purpose of this chapter is to protect ~~the~~ threatened and endangered sea turtles known to nest along on the ~~b~~**B**eaches of Hilton Head Island, ~~by safeguarding hatchlings from sources of artificial light which causes misorientation and subsequent death.~~ **including Loggerhead, Leatherback and Kemp’s Ridley sea turtles, by limiting Artificial Light that is Visible From the Beach. Artificial Light is documented to cause misorientation and disorientation of nesting females and sea turtle hatchlings, which is documented to lead to injury and death of adult sea turtles and hatchlings.**

(Ord. No. 90-13, § 1, 5-7-90)

Section 4. Deletion. That Section 8-5-113 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby deleted as follows:

~~Sec. 8-5-113. – New development.~~

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It is the policy of the Town of Hilton Head Island that no artificial light shall illuminate any area of the beaches of Hilton Head Island. To meet this intent, building and electrical plans for construction of single-family or multifamily dwellings, commercial or other structures, including electrical plans associated with parking lots, dune walkovers or other outdoor lighting if such lighting can be seen from the beach, shall be in compliance with the following:

- ~~(a) Floodlights shall be prohibited. Wall-mounted light fixtures shall be fitted with hoods so that no light illuminates the beach.~~
  - ~~(b) Pole lighting shall be shielded in such a way that light will be contained within an arc of three (3) to seventy-three (73) degrees on the seaward side of the pole. Outdoor lighting shall be held to the minimum necessary for security and convenience.~~
  - ~~(c) Low profile luminaires shall be used in parking lots and such lighting shall be positioned so that no light illuminates the beach.~~
  - ~~(d) Dune walkovers shall utilize low profile shielded luminaires.~~
  - ~~(e) Lights on balconies shall be fitted with hoods so that lights will not illuminate the beach.~~
  - ~~(f) Tinted or filmed glass shall be used in windows above the first floor of on multistory structures. Shade screens can be substituted for this requirement.~~
  - ~~(g) Temporary security lights at construction sites shall not be mounted more than fifteen (15) feet above the ground. Illumination from the lights shall not spread beyond the boundary of the property being developed and in no case shall those lights illuminate the beach.~~
- ~~(Ord. No. 90-13, § 1, 5-7-90)~~

Section 5. Addition. That Section 8-5-113 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby added as follows:

**Sec. 8-5-113. – Standards for New Development.**

**It is the intent of the Town of Hilton Head Island to reduce the number of nesting adult females and sea turtle hatchlings misoriented and disoriented by Artificial Light that is Visible From The Beaches of Hilton Head Island. To meet this intent, all New Development shall comply with the standards below. Exterior Light Fixtures, windows, and glass doors that are Visible From the Beach, or that would be Visible From The Beach if they were not obscured from view of the Beach by vegetation when they are installed, shall meet the standards below. Ambient Light is permitted.**

- (a) Exterior Light Fixtures that are Visible From The Beach shall be Downward Directed, and shall also have a Shield.**
- (b) Floodlights that are Visible From The Beach serving as temporary Security Lighting at construction sites shall not be mounted more than fifteen (15) feet above the ground. Such Light Fixtures shall be activated by a motion detector or shall use bulbs that produce long wavelength light (560 nanometers or greater),**

**which is amber, orange, or red light. The light from any such Floodlight shall not spread beyond the boundary of the property being developed.**

- (c) Permanent Security Lighting Visible From The Beach shall be permitted throughout the night as long as Low Profile Luminaires are used.**
- (d) Light Fixtures illuminating areas of dune walkovers shall be turned off between 10:00 p.m. and 6:00 a.m. during Sea Turtle Nesting Season. Light Fixtures illuminating areas of dune walkovers that produce long wavelength light (560 nanometers (NM) or greater), which is amber, orange, or red light, are exempt from this requirement.**
- (e) Windows and glass doors that are Visible From The Beach shall have Tinted or Filmed Glass, or shall be installed with an interior or exterior Solar Screen. If a Solar Screen is used, the Solar Screen must completely cover the glass between 10:00 p.m. and 6:00 a.m. during Sea Turtle Nesting Season.**

Section 6. Deletion. That Section 8-5-114 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby deleted as follows:

~~Sec. 8-5-114. — Exemptions for new development.~~

~~The provisions of Section 8-5-113 of this chapter shall not apply to any structure for which a building permit has been issued by the Town of Hilton Head Island prior to the effective date of this chapter.~~

~~(Ord. No. 90-13, § 1, 5-7-90)~~

Section 7. Addition. That Section 8-5-114 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby added as follows:

**Sec. 8-5-114. - Exemptions.**

**The provisions of Section 8-5-113 shall not apply to any structure for which a building permit has been issued or applied for by the Town of Hilton Head Island prior to April 30, 2021.**

**(Ord. No. 90-13, § 1, 5-7-90)**

Section 8. Deletion. That Section 8-5-115 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby deleted as follows:

~~Sec. 8-5-115. — Existing development.~~

~~It is the policy of the Town of Hilton Head Island that no artificial light shall illuminate any area of the beaches of Hilton Head Island, South Carolina. To meet this intent, lighting of existing structures which can be seen from the beach shall be in compliance with the following within six (6) months of the effective date of this chapter.~~



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- ~~(a) Lights illuminating buildings or associated structures and grounds for decorative or recreational purposes shall be shielded or screened such that they are not visible from the beach, or turned off after 10:00 p.m. during the period of May 1 to October 31 of each year.~~
- ~~(b) Lights illuminating dune walkovers of any areas oceanward of the dune line shall be turned off after 10:00 p.m. during the period of May 1 to October 31 of each year.~~
- ~~(c) Security lighting shall be permitted throughout the night so long as low profile luminaires are used and screened in such a way that those lights do not illuminate the beach.~~
- ~~(d) Window treatments in windows facing the ocean above the first floor of multistory structures are required so that interior lights do not illuminate the beach. The use of black-out draperies or shade screens are preferred. The addition of tint or film to windows or awnings is also encouraged, as is turning off unnecessary lights if the light illuminates the beach.~~

~~(Ord. No. 90-13, § 1, 5-7-90)~~

Section 9. Addition. That Section 8-5-115 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby added as follows:

**Sec. 8-5-115. – Standards for Existing Development.**

**It is the intent of the Town of Hilton Head Island to reduce the number of nesting adult females and sea turtle hatchlings misoriented and disoriented by Artificial Light that is Visible From The Beaches of Hilton Head Island. To meet this intent, all Existing Development shall comply with the standards below. Ambient Light is permitted.**

- (a) All exterior Light Fixtures Visible From The Beach shall be Downward Directed and have a Shield on or after May 1, 2021 or they shall be turned off between 10:00 p.m. and 6:00 a.m. during Sea Turtle Nesting Season.**
- (b) On or after May 1, 2021, Floodlights Visible From The Beach serving as temporary Security Lighting at construction sites shall not be mounted more than fifteen (15) feet above the ground. Such Floodlights shall be activated by a motion detector or shall use bulbs that produce long wavelength light (560 nanometers (NM) or greater), which is amber, orange, or red light. The light shall not spread beyond the boundary of the property being developed.**
- (c) On or after May 1, 2021, permanent Security Lighting Visible From The Beach shall be permitted throughout the night as long as Low Profile Luminaires are used or any such permanent Security Lighting shall be turned off between 10:00 p.m. and 6:00 a.m. during Sea Turtle Nesting Season.**
- (d) On or after May 1, 2021, Light Fixtures illuminating areas of dune walkovers on the Beach shall be turned off between 10:00 p.m. and 6:00 a.m. during Sea Turtle Nesting Season. Light Fixtures that are Downward Directed, have a Shield, and**

**use bulbs that produce long wavelength light (560 nanometers (NM) or greater), which is amber, orange or red light, are exempt from this requirement.**

**(f) On or after May 1, 2021, one or more of the following options shall be used so that interior Artificial Light is less Visible From The Beach between 10:00 p.m. and 6:00 a.m. during Sea Turtle Nesting Season. Ambient Light is permitted.**

- 1. Use Opaque material (curtains, blinds, drapes, etc.) or Solar Screens to cover windows and glass doors that are Visible From The Beach between 10:00 pm. and 6:00 a.m. during Sea Turtle Nesting Season.**
- 2. Apply Tint or Film with a manufacturer verified inside-to-outside light Transmittance Value of 0.45 (45%) or less to windows and glass doors that are Visible From The Beach. Any Tint or Film used shall not be dual reflective or mirror finish.**
- 3. Use Shields on Light Fixtures that are Visible From The Beach.**
- 4. Use long wavelength (560 nanometers (NM) or greater) lightbulbs in Light Fixtures that are Visible From The Beach.**
- 5. Turn off interior lights that are Visible From The Beach between 10:00 p.m. and 6:00 a.m. during Sea Turtle Nesting Season.**

**(g) On or after May 1, 2021, new windows and glass doors installed in Existing Development that are Visible From The Beach shall be of Tinted or Filmed Glass, or shall be installed with an interior or exterior Solar Screen. Existing Development shall be exempt from the requirement of this Sec. 8-5-115(g) if the total area of all new windows and glass doors to be installed constitutes less than half of the total area of windows and glass doors on the structure that are Visible From The Beach.**

Section 10. Deletion. That Section 8-5-116 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby deleted as follows:

~~Sec. 8-5-116. — Publicly owned lighting.~~

~~Streetlights and lighting at parks and other publicly owned beach access areas shall be subject to, as well as the following:~~

- ~~(a) Whenever possible, streetlights shall be located so that the bulk of their illumination will travel away from the beach. These lights shall be equipped with shades or shields that will prevent backlighting and render them not visible from the beach.~~
- ~~(b) Lights at parks or other public beach access points shall be shielded or shaded or shall not be utilized during the period May 1 to October 31 of each year.~~

~~(Ord. No. 90-13, § 1, 5-7-90)~~

Section 11. Amendment. That Section 8-5-117 of the Municipal Code of the Town of Hilton Head Island, South Carolina, be and the same hereby amended as follows:

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Sec. 8-5-1176. - Enforcement and penalty.

This chapter shall be enforced in accordance with the provisions of this chapter, with penalties set forth in section 1-5-10 of this Code.

(Ord. No. 90-13, § 1, 5-7-90)

Section 12. Severability. If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 13. Effective Date. This Ordinance shall be effective upon its adoption by the Town Council of the Town of Hilton Head Island, South Carolina.

**PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.**

THE TOWN OF HILTON HEAD  
ISLAND, SOUTH CAROLINA

\_\_\_\_\_  
John J. McCann, Mayor

ATTEST:

\_\_\_\_\_  
Krista Wiedmeyer, Town Clerk

First Reading:  
Second Reading:

APPROVED AS TO FORM:

\_\_\_\_\_  
Curtis L. Coltrane, Town Attorney

Introduced by Council Member: \_\_\_\_\_

## Attachment B

### Chapter 5 - SEA TURTLE PROTECTION

#### Sec. 8-5-111. - Definitions.

For the purpose of this chapter, the following terms shall have the meanings set forth in this section:

- (a) *Artificial light*: Any source of light emanating from a manmade device, including but not limited to, incandescent mercury vapor, metal halide, or sodium lamps, flashlights, spotlights, street lights, vehicular lights, construction or security lights.
- (b) *Beach*: That area of unconsolidated material that extends landward from the mean low water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation (usually the effective limit of storm waves).
- (c) *Floodlight*: Reflector-type light fixture which is attached directly to a building and which is unshielded.
- (d) *Low profile luminaire*: Light fixture set on a base which raises the source of the light no higher than forty-eight (48) inches off the ground, and designed in such a way that light is directed downward from a hooded light source.
- (e) *New development*: Shall include new construction and remodeling of existing structures when such remodeling includes alteration of exterior lighting.
- (f) *Person*: Any individual, firm, association, joint venture, partnership, estate, trust, syndicate, fiduciary, corporation, group, or unit or federal, state, county or municipal government.
- (g) *Pole lighting*: Light fixture set on a base or pole which raises the source of the light higher than forty-eight (48) inches off the ground.
- (h) *Solar screen*: Screens which are fixed installations and permanently project shade over the entire glass area of the window. The screens must be installed outside of the glass and must:
  - (1) Have a shading coefficient of .45 or less; and
  - (2) Carry a minimum five-year warranty; and
  - (3) Must have performance claims supported by approved testing procedures and documentation.
- (i) *Tinted or filmed glass*: Window glass which has been covered with window tint or film such that the material has:
  - (1) A shading coefficient of .45 or less; and
  - (2) A minimum five-year warranty; and
  - (3) Adhesive as an integral part; and
  - (4) Performance claims which are supported by approved testing procedures and documentation.
- (j) *Shading coefficient*: A coefficient expressing that percentage of the incident radiation which passes through the window as heat.

(Ord. No. 90-13, § 1, 5-7-90)

#### Sec. 8-5-112. - Purpose.

The purpose of this chapter is to protect the threatened and endangered sea turtles which nest along the beaches of Hilton Head Island, by safeguarding the hatchlings from sources of artificial light which cause disorientation and subsequent death.

(Ord. No. 90-13, § 1, 5-7-90)

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### Sec. 8-5-113. - New development.

It is the policy of the Town of Hilton Head Island that no artificial light shall illuminate any area of the beaches of Hilton Head Island. To meet this intent, building and electrical plans for construction of single-family or multifamily dwellings, commercial or other structures, including electrical plans associated with parking lots, dune walkovers or other outdoor lighting if such lighting can be seen from the beach, shall be in compliance with the following:

- (a) Floodlights shall be prohibited. Wallmounted light fixtures shall be fitted with hoods so that no light illuminates the beach.
- (b) Pole lighting shall be shielded in such a way that light will be contained within an arc of three (3) to seventy-three (73) degrees on the seaward side of the pole. Outdoor lighting shall be held to the minimum necessary for security and convenience.
- (c) Low profile luminaires shall be used in parking lights and such lighting shall be positioned so that no light illuminates the beach.
- (d) Dune walkovers shall utilize low profile shielded luminaires.
- (e) Lights on balconies shall be fitted with hoods so that lights will not illuminate the beach.
- (f) Tinted or filmed glass shall be used in windows facing the ocean above the first floor of multistory structures. Shade screens can be substituted for this requirement.
- (g) Temporary security lights at construction sites shall not be mounted more than fifteen (15) feet above the ground. Illumination from the lights shall not spread beyond the boundary of the property being developed and in no case shall those lights illuminate the beach.

(Ord. No. 90-13, § 1, 5-7-90)

### Sec. 8-5-114. - Exemptions for new development.

The provisions of section 8-5-113 of this chapter shall not apply to any structure for which a building permit has been issued by the Town of Hilton Head Island, prior to the effective date of this chapter.

(Ord. No. 90-13, § 1, 5-7-90)

### Sec. 8-5-115. - Existing development.

It is the policy of the Town of Hilton Head Island that no artificial light shall illuminate any area of the beaches of Hilton Head Island, South Carolina. To meet this intent, lighting of existing structures which can be seen from the beach shall be in compliance with the following within six (6) months of the effective date of this chapter.

- (a) Lights illuminating buildings or associated structures and grounds for decorative or recreational purposes shall be shielded or screened such that they are not visible from the beach, or turned off after 10:00 p.m. during the period of May 1 to October 31 of each year.
- (b) Lights illuminating dune walkovers of any areas oceanward of the dune line shall be turned off after 10:00 p.m. during the period of May 1 to October 31 of each year.
- (c) Security lighting shall be permitted throughout the night so long as low profile luminaires are used and screened in such a way that those lights do not illuminate the beach.
- (d) Window treatments in windows facing the ocean above the first floor of multistory structures are required so that interior lights do not illuminate the beach. The use of black-out draperies or shade screens are preferred. The addition of tint or film to windows or awnings is also encouraged, as is turning off unnecessary lights if the light illuminates the beach.

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(Ord. No. 90-13, § 1, 5-7-90)

Sec. 8-5-116. - Publicly owned lighting.

Streetlights and lighting at parks and other publicly owned beach access areas shall be subject to the following:

- (a) Whenever possible, streetlights shall be located so that the bulk of their illumination will travel away from the beach. These lights shall be equipped with shades or shields that will prevent backlighting and render them not visible from the beach.
- (b) Lights at parks or other public beach access points shall be shielded or shaded or shall not be utilized during the period May 1 to October 31 of each year.

(Ord. No. 90-13, § 1, 5-7-90)

Sec. 8-5-117. - Enforcement and penalty.

This chapter shall be enforced in accordance with the provisions of this chapter, with penalties set forth in section 1-5-10 of this Code.

(Ord. No. 90-13, § 1, 5-7-90)



# **TOWN OF HILTON HEAD ISLAND**

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## *Community Development Department*

**TO:** Marc Orlando, ICMA~CM, *Town Manager*  
**VIA:** Jennifer Ray, *ASLA, Interim Community Development Director*  
**FROM:** Jayme Lopko, *AICP, Senior Planner*  
**CC:** Shawn Colin, *AICP, Interim Deputy Town Manager*  
**DATE:** February 18, 2021  
**SUBJECT:** Proposed Ordinance 2021-01 - Historic Mitchelville Freedom Park MOU  
Renewal & Lease Amendments

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**Recommendation:** The Community Services and Public Safety Committee recommends that Town Council renew the Memorandum of Understanding (MOU) related to Historic Mitchelville Freedom Park for an additional two (2) years and approve amendments to the lease of Historic Mitchelville Freedom Park (HMFP) to Historic Mitchelville Freedom Park, Inc. (Mitchelville).

The Community Services and Public Safety Committee met on January 25, 2021 and voted 4-0 to forward a recommendation to Town Council to renew the MOU related to Historic Mitchelville Freedom Park for an additional two (2) years and approve amendments to the lease of Historic Mitchelville Freedom Park.

As part of the discussion, Mitchelville was asked to bring updates on their progress to the Finance and Administrative Committee at least every six months.

**Summary:** The approved MOU related Historic Mitchelville Freedom Park is expiring and requires review by the Town and Mitchelville prior to the expiration on March 19, 2021.

Approval of the updated MOU will extend the term of the MOU, which is set to expire, for an additional 2 years. The MOU has also been revised to include a management fee for Mitchelville, similar to what the Town has done for the Coastal Discovery Museum.

Approval of the updated lease will modify the language requiring HMFP to remain a public park indefinitely and will remove requirements for the submittal of a Master Plan and Business Plan within four (4) years of lease execution.

**Background:** On April 18, 2017, Town Council voted to approve a 2-year MOU detailing capital improvement and maintenance responsibilities and a lease of then Fish Haul Creek Park to Mitchelville. On March 19, 2019, Town Council renewed the MOU for an additional two years and modified the lease to extend the time period to four years for submittal of both the Master Plan and Business Plan. The current lease contains requirements for HMFP to remain a public park indefinitely and for Mitchelville to submit a Master Plan and Business Plan by April 18, 2021.

Beaufort County allocated \$250,000 and hired WLA as a consultant to draft a Master Plan and Business Plan for Mitchelville. These plans were presented to and approved by Town Council at their August 18, 2020 meeting.

The revised MOU and lease are attached with newly added language illustrated with double underline and deleted language illustrated with ~~striketrough~~.

**Attachment:**

*Attachment A:* Ordinance (including Exhibit A - Memorandum of Understanding and Exhibit B - Lease)



**AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF AN UPDATED MEMORANDUM OF UNDERSTANDING AND AMENDED LEASE WITH HISTORIC MITCHELVILLE FREEDOM PARK, INC., RELATED TO REAL PROPERTY OWNED BY THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, PURSUANT TO THE AUTHORITY OF S.C. CODE ANN. SEC. 5-7-40 (SUPP. 2012), AND SEC. 2-7-20, CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, (1983); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Hilton Head Island, South Carolina (“Town”), owns one or more parcels of real property known generally as “Historic Mitchelville Freedom Park”; and

**WHEREAS**, the Town has determined that it is in the best interests of the Town to provide for the preservation of Historic Mitchelville Freedom Park, and for the utilization of the Park as a cultural and historical museum; and

**WHEREAS**, on April 18, 2017 the Town adopted an ordinance, which entered into a Memorandum of Understanding and Lease with Historic Mitchelville Freedom Park, Inc. (“Mitchelville”, formerly known as: Mitchelville Preservation Project, Inc.) for the operation of a cultural and historical museum in the Town of Hilton Head Island; and

**WHEREAS**, on March 19, 2019 the Town adopted an ordinance, which renewed a Memorandum of Understanding and amended a Lease with Mitchelville for the operation of a cultural and historical museum in the Town of Hilton Head Island; and

**WHEREAS**, the Town Council of the Town is authorized to enter into leases of Town-owned land under the authority of S.C. Code Ann. Section 5-7-40 (Supp. 2010) and Section 2-3-30 and Section 2-7-20, *Code of The Town of Hilton Head Island*, South Carolina (1983, as amended); and

**WHEREAS**, the Town Council for the Town has determined that it is in the best interests of the Town to authorize the execution and delivery of an updated Memorandum of Understanding and amended Lease for Historic Mitchelville Freedom Park, which is described and attached hereto as Exhibits “A” and “B”.

**NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND IT IS ORDAINED BY THE AUTHORITY OF THE SAID TOWN COUNCIL:**

**Section 1 - Execution, Delivery and Performance of Lease.**

(a) The Mayor and/or Town Manager are hereby authorized to execute and deliver the updated Memorandum of Understanding and amended Lease in substantial conformance with the attached Exhibits “A” and “B”; and

(b) The Town Manager is hereby authorized to take such other and further actions as may be necessary to complete the performance of the Town's obligations under the terms and conditions of the updated Memorandum of Understanding and amended Lease.

**Section 2 - Severability.**

If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**Section 3 - Effective Date.**

This Ordinance shall be effective upon adoption thereof by the Town Council for the Town of Hilton Head Island, South Carolina.

(SIGNATURE PAGE FOLLOWS)

**PASSED AND APPROVED BY THE TOWN COUNCIL FOR THE TOWN OF  
HILTON HEAD ISLAND, SOUTH CAROLINA, ON THIS \_\_\_\_ DAY OF  
\_\_\_\_\_, 2021.**

\_\_\_\_\_  
John McCann, Mayor

ATTEST:

\_\_\_\_\_  
Krista Wiedmeyer, Town Clerk

First Reading: March 2, 2021

Second Reading: \_\_\_\_\_

Approved as to form: \_\_\_\_\_  
Curtis L. Coltrane, Town Attorney

Introduced by Council Member: \_\_\_\_\_

Exhibit A

STATE OF SOUTH CAROLINA )  
 ) MEMORANDUM OF UNDERSTANDING  
COUNTY OF BEAUFORT )  
 )

This Memorandum of Understanding (the “Memorandum”) is entered into by and between the Town of Hilton Head Island (hereinafter referred to as the “Town,”) and the Historic Mitchelville Freedom Park Inc. (formerly known as: Mitchelville Preservation Project, Inc.), a South Carolina not-for-profit corporation (hereinafter referred to as “Mitchelville”) regarding the Town’s assumption of responsibility and payment for janitorial, landscaping, general maintenance, and current capital costs at Historic Mitchelville Freedom Park.

1. **Governing Document.** It is the intent of the parties that this Memorandum shall not replace the Lease between the Town and Mitchelville regarding the use of Historic Mitchelville Freedom Park. This Memorandum shall only govern circumstances wherein the Town pays a management fee to Mitchelville and assumes the responsibility for janitorial, landscaping, general maintenance, and current capital costs at Historic Mitchelville Freedom Park during the term of this Memorandum. Any additional capital and operating costs will be the responsibility of Mitchelville.
  
2. **General.** The Town owns Historic Mitchelville Freedom Park and has entered into a Lease with Mitchelville for the creation of a historical and cultural museum at Historic Mitchelville Freedom Park. This Memorandum does not replace or terminate the Lease between the Town and Mitchelville pertaining to Historic Mitchelville Freedom Park.
  
3. **Maintenance.** During the term of this Memorandum, the Town shall, at its sole cost and expense:
  - a. Provide for the janitorial and landscaping services at Historic Mitchelville Freedom Park.
  
  - b. Provide for general maintenance of the park including driveway and parking area scraping and stocking of paper products in the restroom.
  
  - c. Continue the 10 year Capital Improvements planned for the park, including: roof replacement, partition replacement, light fixtures, plumbing fixtures, exterior/interior painting, structure repairs, pathway/sidewalk repairs, parking lot repairs, amenities/signage replacements, and landscape replacements.
  
4. **Programming.**
  - a. The Park shall be open daily unless otherwise listed, hours of operation shall be as follows: Monday through Sunday dawn to dusk.

## Exhibit A

- b. Mitchelville may schedule programs or have facility rentals that occur outside normal operating hours.
5. **Operations.**
- a. The Town shall pay to Mitchelville a management fee of One Hundred Five Thousand dollars (\$105,000.00) per annum. Mitchelville shall raise the balance of its operating budget as shown on its operating account profit and loss statement from sources other than the Town for the annual operating budget of the Mitchelville.
  - b. Other entities, public or private, may contribute to the annual operating budget of Mitchelville.
  - c. It is understood by the Town and Mitchelville that the Town will contract for and pay all expenses related to janitorial, landscaping, general maintenance, and current capital costs at Historic Mitchelville Freedom Park. Any new capital projects would be at the sole cost and expense of Mitchelville.
  - d. Mitchelville shall be entitled to charge User Fees for the use of the Park and its facilities to defray the cost of event set up, event cleanup, and supervision of the Park and facilities during events. Prior to charging any User Fees for the use of the Park and facilities, Mitchelville shall prepare a schedule of such fees and present the same to the Town for approval by the Town Council. Any changes to the approved schedule of fees shall be submitted to the Town Council for its approval.
6. **Miscellaneous.**
- a. Mitchelville shall provide the Town with current copies of all insurance policies of Mitchelville relating to their operations within thirty (30) days of signing of the Memorandum and copy the Town upon each renewal of said insurance policies.
  - b. Mitchelville shall remain a not-for-profit independent entity whose policies and procedures shall be determined by its Executive Director and Board of Directors.
  - c. Financial Statements:
    - i. Mitchelville shall cause a financial statement to be prepared each year at the conclusion of Mitchelville's fiscal year by an entity independent of, and unconnected to, Mitchelville. Mitchelville's fiscal year ends on December 31 of each calendar year. Mitchelville shall deliver a copy of

## Exhibit A

its financial statement to the Town within thirty (30) days of the completion of the financial statement each calendar year.

- ii. Mitchelville shall submit an annual operating budget to the Town. The submission of this budget shall coincide with the Town's annual budget process. The Town Manager shall inform Mitchelville of the procedures to be followed in regard to the budgeting process.
- iii. Mitchelville shall provide the Town with an annual independent audit report or review report prepared by a Certified Public Accountant (CPA) acceptable to the Town. An annual report shall be submitted no less than every third year.
- iv. Upon request of the Town, Mitchelville shall make its financial books and records available to the Town for Review. The Town shall give Mitchelville written notice of its intention to review Mitchelville's financial books and records. Mitchelville shall make its financial books and records available for review by the Town within twenty (20) days of the Town's written notice.

7. **Notices.** All notices required under this Memorandum shall be deemed to have been given if in writing and
- a. delivered personally; or
  - b. mailed first class, postage prepaid, to the address of record set forth below, in which case delivery shall be deemed to have occurred two calendar days after the date of postmark.

**HISTORIC MITCHELVILLE FREEDOM PARK, Inc.**  
Executive Director  
539 William Hilton Parkway, Suite 134  
Hilton Head Island, SC 29928

**TOWN OF HILTON HEAD ISLAND**  
Town Manager  
One Town Center Court  
Hilton Head Island, SC 29928

The address of record may be changed by written notice to the other party.

8. **Term.** The term of this Memorandum of Understanding shall be for a period of two (2) years from the date of execution, March 16, 2021 ~~19, 2019~~. Prior to March 16, 2021 ~~19, 2019~~, this Memorandum will be reviewed by the Town and Mitchelville. Changes may be made only with and by the mutual consent of both parties.

## Exhibit A

9. **Termination.** In addition to any other rights of termination set forth in this Memorandum, each party shall have the right to terminate this Memorandum, by written notice to the other party, if the other party is in default of any term or provision of this Memorandum, and the defaulting party fails to cure or correct such default within fourteen (14) days of notice thereof from the non-defaulting party. A party may elect to disregard a default for the period of time without waiving its right to declare a default at a subsequent time or upon reoccurrence of the default.

(SIGNATURE PAGES FOLLOW)







Exhibit B

**A LONG TERM LEASE**

**BY AND BETWEEN**

**THE TOWN OF HILTON HEAD ISLAND, SOUTH  
CAROLINA,**

**AND**

**HISTORIC MITCHELVILLE FREEDOM PARK, INC.**

(FORMERLY KNOWN AS: MITCHELVILLE PRESERVATION PROJECT, INC.)

**DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, ~~2021~~ 19**

# Exhibit B

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Exhibit B

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

LONG TERM LEASE

This Long Term Lease, dated this \_\_\_\_ day of \_\_\_\_\_, ~~2021~~<sup>19</sup> (together with any amendments made in accordance herewith, hereinafter, the “Lease”), is amended and entered into by and between The Town of Hilton Head Island, South Carolina (hereinafter, the “Town”), and the Historic Mitchelville Freedom Park, Inc., (hereinafter, the “Mitchelville”).

WITNESSETH

WHEREAS, the Town is a body politic and a political subdivision of the State of South Carolina, existing as such under and by virtue of the Constitution, statutes, and laws of the State of South Carolina; and,

WHEREAS, Mitchelville is a nonprofit corporation, existing as such under and by virtue of the Constitution, statutes and laws of the State of South Carolina; and,

WHEREAS, under the authority of S. C. Code Ann. § 5-7-40 (Supp. 2010), and Section 2-3-30, *Code of the Town of Hilton Head Island* (1983), the Town is authorized to lease land belonging to the Town; and,

WHEREAS, on September 7, 2010, the Town authorized the negotiation of a long term lease of Town owned land known as Historic Mitchelville Freedom Park to Mitchelville; and

WHEREAS, on April 18, 2017, the Town Council of the Town adopted Ordinance No. 2017-04 authorizing the execution and delivery of this Lease; and

WHEREAS, on January 12, 2017, the Board of Directors of Mitchelville, by resolution duly adopted, authorized the execution and delivery of this Lease;

WHEREAS, on March 19, 2019, the Town Council of the Town adopted Ordinance No. 2019-05 authorizing the execution and delivery of ~~this~~ an amended Lease; and

## Exhibit B

WHEREAS, on \_\_\_\_\_, the Town Council of the Town adopted Ordinance No. \_\_\_\_\_ authorizing the execution and delivery of this amended Lease; and

NOW THEREFORE, for and in consideration of the sum of One and no/100 (\$1.00) Dollar paid by Mitchelville to the Town, and the full and faithful performance of the mutual promises, conditions, and covenants herein set forth, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Town and Mitchelville, the Parties hereto agree as follows:

### ARTICLE 1

1.1. **The Property:** The improved real property leased by Mitchelville pursuant hereto is known and described as follows:

#### PARCEL 1

All that certain piece, parcel or lot of land lying above the mean high water line of Port Royal Sound and the marshes of Fish Haul Creek, containing 16.481 acres, more or less, and which is more particularly shown and described on the Plat thereof entitled "16.481 AC. PARCEL, FISH HAUL PLANTATION FISH HAUL CREEK AND PORT ROYAL SOUND HILTON HEAD ISLAND BEAUFORT COUNTY SOUTH CAROLINA", prepared by Millard A. Dunham, P. L. S., and which is recorded in the Office of the Register Of Deeds for Beaufort County, South Carolina, in Plat Book 63 at Page 93.

#### PARCEL 2

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 3.008 acres, more or less, shown and described as "3.00 ACRES" on that certain plat entitled "A Plat of the Property of Dr. J. H. Brewton" prepared by Richardson & Associates, Jerry L. Richardson, S.C.R.L.S. 4784, dated September 5, 1973, and which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 22 at Page 100.

#### PARCEL 3

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 8.458 acres, more or less, shown and described as "PARCEL 'B'" on that certain plat entitled "Plat --Parcels A, B & C", prepared by Freiesleben-Yerkes, Inc., E. H. Freiesleben, S.C.R.L.S. 4624, dated July 20, 1979, as revised,



## Exhibit B

and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 29 at Page 117.

AND ALSO, ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 0.119 acres more or less, shown and described as "35' ACCESS EASEMENT" on the Plat recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 29 at Page 117.

SAVE AND EXCEPT, ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 0.100 acre, more or less, being a portion of that property shown and described as "PROPOSE EASEMENT TRADE" on the Plat recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 29 at Page 117.

### PARCEL 4

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 5.00 acres, more or less, shown and described as "PARCEL 'C'" on that certain plat entitled "Plat --Parcels A, B & C" prepared by Freiesleben-Yerkes, Inc., E. H. Freiesleben, S.C.R.L.S. 4624, dated July 20, 1979, as revised, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 29 at Page 117.

Parcels 1, 2, 3, and 4 described above, previously referred to as Fish Haul Creek Park, are known generally as "Historic Mitchelville Freedom Park", Beaufort County PIN R510-005-000-0208-0000, and are collectively referred to herein as the "Property".

1.2. **Mitchelville Accepts the Property "As Is":** Mitchelville represents and warrants that it has performed, or has had the opportunity to perform, an examination of (1) the Property, (2) title to the Property, and (3) the existing use restrictions on the Property, and accepts the Property "as is", and without recourse to or against the Town as to the title thereto, availability of water, sewer, electricity, or telecommunication services, the nature, condition, or usability thereof, or the uses to which Property may be put. In no event shall the Town have any liability to Mitchelville for any defect in the Property, or the title to the Property, or conditions existing in, on, under, over, or about the Property or any limitation on the uses that may be made of the Property. Mitchelville accepts this limitation on the Town's liability and acknowledges that this limitation of the Town's liability is a material term of this Lease without which the Town would not have entered into this Lease.

## Exhibit B

1.3. **The Property to Continue as a Public Park:** Mitchelville acknowledges that the Property is, as of the date of the commencement of this Lease, a public park. Mitchelville acknowledges and accepts that the Property shall at all times of normal daily operations ~~during the term of this Lease~~ remain open as a public park, with the public's right to enter the Property for parking and use of the amenities of the public park and access to the marshes of Fish Haul Creek and Port Royal Sound being preserved until such time that the public park and its amenities including water access are relocated.

- (a) **Certain Restrictions Permitted:** The foregoing language of Article 1.3 notwithstanding, Mitchelville shall be permitted to restrict the public's access to any portion of the Property during times when and where construction activity or any other similar hazardous work is being undertaken by Mitchelville.
- (b) **Events Permitted:** The foregoing language of Article 1.3 shall not be interpreted to prevent Mitchelville from holding events from time to time at the Property for which a charge or admission fee must be paid by any person attending the event. Access to the Property may be restricted by Mitchelville to those persons paying the applicable charge or admission fee with approval by the Town Manager or his designee.

1.4. **Application of Laws and Other Matters:** This Lease is made by the Town and accepted by Mitchelville subject to all existing ordinances, regulations, and statutes, including zoning regulations and restrictive covenants affecting the Property that are now in force and which may be enacted in the future.

1.5. **No Other Interest in Real Property Created:** Other than the leasehold interest established by this Lease, Mitchelville shall have no interest in the Property.

1.6. **Rent:** Mitchelville shall pay to the Town Rent in the sum of One Dollar per year for the term of this Lease. Rent shall be due on January 1 of each year during any term of this Lease.

1.7. **National Park Service Designation:** The Town and Mitchelville acknowledge and agree that the Town and/or Mitchelville may seek and apply for the Property and/or Mitchelville's use thereon to become part of the National Park Service Reconstruction Era Monument (or similar designation). The Parties agree to cooperate and work in

## Exhibit B

good faith to achieve this designation, including but not limited to executing any necessary easements, agreements or the like.

### ARTICLE 2

2.1. **Effective Date:** The “Effective Date” of this Lease shall be the date upon which the duly authorized officials of the Town execute and deliver this Lease to Mitchelville.

### ARTICLE 3

3.1. **Limited Obligation of the Town:** The Town shall not be required to furnish, and has no obligation to furnish, to Mitchelville any facilities or services of any kind, including, but not limited to, water, sewage disposal, sewage capacity, solid waste collection and disposal, recycling collection, electricity, light, power, or telecommunication services.

3.2. **Utilities and Other Services:** Mitchelville shall at its sole cost and expense arrange for the provision of utilities and other services to the Property, including, but not limited to, water, sewage disposal, sewage capacity, solid waste collection and disposal, recycling collection, electricity, light, power, and telecommunication services. Any fees for reservation of water or sewage or electrical capacity, or any other arrangements that must be made with the provider of any utility or any other service shall be the sole responsibility of Mitchelville.

3.3. **Mitchelville is Responsible for the Payment of all Expenses:** Mitchelville shall be solely responsible for the payment of any and all costs, expenses, and charges for any utility or other service, including water, sewage disposal, sewage capacity, solid waste collection and disposal, recycling collection, electricity, light, power, and telecommunication services that are used, rendered, or supplied to or upon the Property or in connection with Mitchelville’s use of the Property, and *ad valorem* real property taxes (including but not limited to stormwater utility (SWU) fees), if any.

3.4. **Indemnification and Hold Harmless:** Mitchelville shall indemnify and hold the Town harmless from any claims for loss, damage, or liability, including reasonable attorney’s fees and costs incurred by the Town in responding to or defending any claim, arising out of or on account of any injury, death, or damage to any person, or to the property of any person, resulting from the use of the Property by Mitchelville and Mitchelville’s operation thereon, or arising from any act or omission of Mitchelville with respect to the exercise of Mitchelville’s rights hereunder; provided, however, in no event

## Exhibit B

will Mitchelville indemnify or hold harmless the Town for acts or omissions of the Town or its employees or agents.

### ARTICLE 4

#### 4.1. ~~Construction of Improvements or Facilities on the Property Prior to Approval of Master Plan and Business Plan by Town Council:~~

- (a) ~~—Prior to approval by the Town Council of the Town (the “Town Council”) of the Master Plan (as defined in Article 4.2) and the Business Plan (as defined in Article 4.3), and before undertaking construction of any improvements or facilities on the Property, Mitchelville shall submit to the Town Council for review and approval the plans and specifications of the proposed improvements or facilities, as well as information describing how Mitchelville will fund such construction and related operations. The Town Council may approve or disapprove all or any part of the proposed improvements or facilities as the Town Council, in its sole discretion, may deem advisable.~~
- (b) ~~—Any proposed improvements or facilities on the Property must be substantially in furtherance of the operation of a cultural and historical museum on the Property.~~
- (c) ~~—Any proposed improvements or facilities on the Property shall, in addition to approval by the Town Council, be subject to all applicable provisions of the Land Management Ordinance of the Town (the “LMO”), any applicable restrictive covenants, and any other applicable State, Federal or local statutes, ordinances, or regulations. Approval of any proposed improvements or facilities on the Property by the Town Council, in and of itself, shall not constitute an authorization to commence any work at the Property for which any other approval or permit of any nature is required.~~
- (d) ~~—The provisions of this Article 4.1 shall be inapplicable after the Master Plan is approved by Town Council as described below in Article 4.2.~~

4.2. ~~**The Master Plan:** Prior to undertaking construction of (1) any improvements or facilities on the Property costing in excess of Four Hundred Thousand Dollars (\$400,000.00), or (2) any permanent structure on the Property which is enclosed~~

## Exhibit B

~~(containing heating, ventilation, and air conditioning) and intended for public occupancy, Mitchelville shall prepare a Master Plan providing the details of the development, use, and operation of the Property as a cultural and historical museum and the development of the amenities on the Property substantially in furtherance of the operation of a cultural and historical museum (the “Master Plan”), and shall submit the Master Plan to the Town Council for review and approval. The Town Council may approve or disapprove all or any part of the Master Plan, as the Town Council, in its sole discretion, may deem advisable. Town Council approval of the Master Plan is a pre-condition to Mitchelville undertaking construction of (1) any improvements or facilities on the Property costing in excess of Four Hundred Thousand Dollars (\$400,000.00), or (2) any permanent structure on the Property which is enclosed (containing heating, ventilation, and air conditioning) and intended for public occupancy. Mitchelville shall submit its Master Plan as required herein and obtain the approval of the Town Council of the Master Plan within four (4) years after the Effective Date of this Lease.~~

**4.1 Amendments to the Master Plan:** Any proposed Material Amendments to the Master Plan shall be submitted to the Town Council for review and approval, which the Town Council may, in its reasonable discretion, approve or disapprove all of any part of. As used in this Article ~~4.1 2(a)~~, a “Material Amendment to the Master Plan” shall mean any departure from the proposed uses and densities shown on the Master Plan as previously approved by the Town Council. Any amendments to the Master Plan that are not Material Amendments shall be subject to review and approval of the Town Manager of the Town or his or her designee, which approval shall not be unreasonably withheld. The Town Manager may, but is not obligated to, submit any amendments to the Master Plan that are not Material Amendments to the Town Council for review and approval. Matters related to site planning shall be handled through the Development Review process as established in the LMO and shall not be considered Material Amendments to the Master Plan. All amendments to the Master Plan (whether Material Amendments or not) shall be subject to all applicable provisions of the LMO, any applicable restrictive covenants, and any other applicable State, Federal or local statutes, ordinances or regulations.

**4.2 Other Approvals Required:** The Master Plan and any Material Amendments to the Master Plan shall, in addition to approval by the Town Council, be subject to all applicable provisions of the Land Management Ordinance of the Town, any applicable State, Federal or local statutes, ordinances or regulations. Approval of the Master Plan by Town Council, in and of itself, shall not constitute any authorization to commence

## Exhibit B

any work at the Property for which any other approval or permit of any nature is required.

~~4.3. **The Business Plan:** Prior to undertaking construction of (1) any improvements or facilities on the Property costing in excess of Four Hundred Thousand Dollars (\$400,000.00), or (2) any permanent structure on the Property which is enclosed (containing heating, ventilation, and air conditioning) and intended for public occupancy, Mitchelville shall develop a long-range Business Plan for the operation of a cultural and historical museum and for the funding of the capital improvements and other amenities to be built at the Property (the "Business Plan"), and shall submit the same to Town Council for its review and approval. The Town Council may approve or disapprove all or any part of the Business Plan, as the Town Council, in its sole discretion, may deem advisable. Town Council approval of the Business Plan is a pre-condition to Mitchelville undertaking construction of (1) any improvements or facilities on the Property costing in excess of Four Hundred Thousand Dollars (\$400,000.00), or (2) any permanent structure on the Property which is enclosed (containing heating, ventilation, and air conditioning) and intended for public occupancy. Mitchelville shall submit its Business Plan as required herein and obtain the approval of the Town Council of the Business Plan within four (4) years after the Effective Date of this Lease.~~

4.3. **Permitted Use:** Mitchelville may use the Property for the following purposes (hereinafter, each a "Permitted Use"): establishing, building, and operating a cultural and historical museum and ancillary and related uses, and any manner consistent with the Master Plan approved by the Town Council.

4.4. **General Management:** Mitchelville shall have, and hereby agrees to undertake and assume, full and complete control and discretion in the management and operation of the Property during the term of this Lease. Without limiting the generality of the foregoing, Mitchelville shall have the following rights and duties with respect to the use, management, and operation of the Property:

- (a) **Determination of Policies:** To determine and carry out policies relating to primary and ancillary activities and services offered by Mitchelville, including those in accordance with the Permitted Use and those allowed as accessory uses under the applicable zoning for the Property.

## Exhibit B

- (b) **Financing:** To have, in its sole discretion, the right to obtain financing utilizing as collateral any fixtures or personal property that Mitchelville has or may acquire;
- (c) **Improvement of Property:** To erect, establish, maintain, modify, build, construct, or remove trails, paths, private use antennae, walkways, roadways, fences, docks, boardwalks, observation centers, decks, parking areas, drainage structures, and other such things in furtherance of the use and operation of the Property by Mitchelville;
- (d) **Compliance with Permitted Use:** In general, to act in accordance with the Permitted Use.

### 4.5. **Financial Statements:**

- (a) Mitchelville shall cause a financial statement to be prepared each year at the conclusion of Mitchelville's fiscal year by an entity independent of, and unconnected to, Mitchelville. Mitchelville's fiscal year ends on December 31 of each calendar year. Mitchelville shall deliver a copy of its financial statement to the Town within thirty (30) days of the completion of the financial statement each calendar year.
- (b) Mitchelville shall submit an annual operating budget to the Town. The submission of this budget shall coincide with the Town's annual budget process. The Town Manager shall inform Mitchelville of the procedures to be followed in regard to the budgeting process.
- (c) Mitchelville shall provide the Town with an annual independent audit report or review report prepared by a Certified Public Accountant (CPA) acceptable to the Town. An annual report shall be submitted no less than every third year.
- (a) Upon request of the Town, Mitchelville shall make its financial books and records available to the Town for Review. The Town shall give Mitchelville written notice of its intention to review Mitchelville's financial books and records. Mitchelville shall make its financial books and records available for review by the Town within twenty (20) days of the Town's written notice.

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4.6. **Other Improvements to the Property Permitted:** Subject to the restrictions imposed by existing restrictive covenants, ordinances, and State or Federal statutes, including zoning regulations affecting the property, that are now in force or which may be enacted in the future, Mitchelville shall have the right to make such improvements as are approved by the Town Council or included in the Master Plan approved by the Town Council, at the sole cost and expense of Mitchelville.

4.7. **Building Permits:** Prior to submitting an application for any building permit in an amount greater than Fifty Thousand and no/100 (\$50,000.00) Dollars for construction on the Property, Mitchelville shall provide the Town Manager with an executed Irrevocable Bank Letter of Credit in favor of the Town, in an amount equal to the cost of construction as shown in the application for the building permit, or other document deemed satisfactory by the Town Manager, confirming that funds in such amount are available and reserved for the purpose of such construction, which Irrevocable Bank Letter of Credit or other documents shall permit the Town to utilize such funds in such amount, less funds expended for the purpose of construction described in the application for building permit and for which Mitchelville has produced executed lien waivers from the contractors, sub-contractors, and material-men involved, to complete the construction described in the application for the building permit and to pay any claims made by contractors, laborers, or materialmen, but only in the event of any failure by Mitchelville to complete the structure described in the application for the building permit or to pay contractors, laborers, or material men.

- (a) **Contract Splitting Prohibited:** Mitchelville may not split or incrementalize construction contracts or building permit applications in order to keep projects below the Fifty Thousand and no/100 (\$50,000.00) Dollar threshold set forth above.
- (b) **Increases in Cost of Project:** If the cost of any project undertaken by Mitchelville is increased by more than ten (10%) percent of the original contract price as shown on the original application for the building permit through changes, overruns, or otherwise, Mitchelville shall increase the amount of the Irrevocable Bank Letter of Credit or other document so as to be in an amount sufficient to cover the increased cost.

4.8. **Permits:** It shall be the sole responsibility of Mitchelville to procure and pay for any required municipal, state, federal, or other governmental permits and



## Exhibit B

authorizations of the various municipal departments and governmental subdivisions having jurisdiction over the Property with respect to Mitchelville's occupation and use of the Property. The Town will provide "owner's authorizations" indicating the Town's consent to any permit being sought by Mitchelville where such "owner's consent" is required under any applicable permitting regulations. The delivery of such "owner's consent" by the Town shall not be deemed a waiver of any applicable development standard or zoning or other requirements.

**4.9. Mechanic's or Other Liens Prohibited:** Mitchelville shall not suffer or permit any mechanic's lien or other lien to be placed against the Property arising out of any construction upon or use of the Property by Mitchelville. If any such lien is filed, Mitchelville shall promptly cause the same to be released of record or bonded off, and shall further indemnify and hold the Town harmless from any costs or expenses, damages, suits, or reasonable attorney's fees arising from the filing or enforcement of any mechanic's lien or any other lien affecting the Property.

**4.10. Maintenance of the Property and Compliance with Laws:** During the term of this Lease, Mitchelville shall, at its sole cost and expense, provide for the maintenance and upkeep of the Property, and shall at all times comply with any and all applicable fire, building, health, and sanitation codes as the same may from time to time be in effect.

**4.11. Rules, Regulations, and Restrictions:** Mitchelville shall at all times during the term of this Lease:

- (a) **Maintenance of the Property and Improvements:** In keeping with the Permitted Use on the Property, maintain the Property and any structures and buildings on the Property, in a clean, neat, safe, sanitary, and orderly condition, it being understood that no use shall be made or permitted of the Property or any part thereof, nor any acts done, which will violate any statutes, ordinance, or regulation, or violate or make inoperative or otherwise impair any insurance policy at any time held by or in any way for the benefit of the Town pursuant to any provision of this Lease;
- (b) **Storage of Hazardous Substances Prohibited:** Other than materials and equipment used, or to be used, in the improvements, maintenance, and use of the Property, the improvements, and the

## Exhibit B

personal property thereon, Mitchelville shall not sell, or suffer or permit to be stored, kept, used, or sold in, upon, or about the Property, or in any structure or building located on the Property, any gasoline, distillate, any substances defined as a “Hazardous Substance” under any Federal, State or local law, ordinance, or regulation, or any other substance or material of an explosive, inflammable, or radiological nature which may contaminate or endanger any part of the Property, any structure or building on the Property, or any person on or about the Property, or present any unusual fire, explosion, or other damaging or dangerous hazard; and, Mitchelville shall, at its sole cost and expense, cause the removal and cleanup of any hazardous substances allowed to contaminate the Property by Mitchelville;

- (c) **Compliance with Laws:** Comply with all governmental rules, regulations, ordinances, statutes, and laws now or hereafter in effect pertaining to the Property or Mitchelville’s use thereof;
- (d) **Waste Dumping or Disposal Prohibited:** Refrain from dumping, disposal, reduction, incineration or other burning of any trash, hazardous material or substance, papers, refuse, or garbage or any kind in, on, or about the Property, in violation of any applicable statute, regulation, or ordinance;
- (e) **Waste Storage Prohibited:** Refrain from storing any trash, garbage, or hazardous material or substance on the Property or in any structure or building located on the Property, nor create or permit the creation of any health or fire hazard, in violation of any applicable statute, regulation, or ordinance;
- (f) **Waste and Nuisances:** Refrain from committing or suffering to commit any waste upon, or making any unlawful, improper or offensive use of, the Property or any structure or building on the Property, or creating any public or private nuisance or act or thing upon the Property or in any structure or building on the Property;
- (g) **Compliance with Restrictive Covenants and Local Ordinances:** Maintain the Property so as to comply with and remain in compliance with any restrictive covenants encumbering the Property

## Exhibit B

and all local ordinances promulgated by the Town, or any other applicable law, rule, regulation, or agreement concerning the Property.

- (h) **Sustainability:** Develop strategies that are consistent with the Town's published and defined goals on sustainability. In so doing, consideration shall be given to balancing environmental, economic and social impacts.

4.12. **Additional Rules:** In addition to the foregoing, Mitchelville shall at all times during the term hereof comply with all other reasonable rules and regulations which the Town may at any time or from time to time establish concerning the use of the Property; provided however, that any such rule or regulation so made shall not be inconsistent with any part of this Lease, and shall not unreasonably interfere with Mitchelville's use and enjoyment of the Property.

4.13. **Town's Waiver of Interest in Personal Property:** The Town waives any right, title, or interest in any and all equipment, displays, furniture, fixtures, moveable non-permanent items and structures, and personal property owned by, loaned to, or leased to Mitchelville; and, said property shall, at all times, remain the property of Mitchelville, such entity that has loaned the property to Mitchelville, or such entity that has leased the property the Mitchelville. The Town further waives any right that it may have to retain or distrain any of the property owned by, leased to, or leased by Mitchelville.

## ARTICLE 5

5.1. **Initial Term of This Lease:** Subject to Articles 5.2, 5.4, and 10.1 below, the term of this lease shall be for a period of Forty Five (45) years, with such term commencing on April 18, 2017, and ending on April 18, 2062 (the "Initial Lease Term"), provided that all terms and conditions of this Lease shall have been complied with by Mitchelville, or unless sooner terminated pursuant to the terms hereof.

5.2. **Renewal of Terms of Lease:** Unless this Lease is sooner terminated pursuant to the terms hereof, at the end of the Initial Lease Term, this Lease shall automatically renew for successive periods of Twenty Five (25) years (hereinafter, each a "Renewal Lease Term"), provided that all terms and conditions of this Lease shall have been complied with by the Parties hereto, unless either Party hereto shall give the other a Notice of Termination as set forth in Article 5.3 below.

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5.3. **Termination of this Lease:** The initial term of this lease shall expire on April 18, 2062 (hereinafter, the “Initial Termination Date”). The first Renewal Lease Term shall expire Twenty Five (25) years from the date of the Initial Termination Date, and subsequent Renewal Lease Terms shall expire each following twenty-five (25) year period. If either Party hereto gives the other Party written notice of its intention not to renew this Lease not less than twelve (12) months prior to the Initial Termination Date or the end of any Renewal Lease Term, then this Lease shall expire on the Initial Termination Date or at the end of the applicable Renewal Lease Term, as the case may be.

5.4. **Ordinance Required:** This Lease is contingent upon the adoption of an Ordinance by the Town authorizing the execution and delivery of the Lease.

~~5.5. — **Termination on Failure of Conditions:** If the condition stated in Article 5.4 does not occur before December 21, 2017, then this Lease shall automatically terminate, and neither Party hereto shall have any further rights or obligations hereunder.~~

~~5.6. — **Termination on Failure of Approval of Master Plan or Business Plan:** Notwithstanding any provision in this Lease to the contrary, this Lease shall automatically terminate in the event that either the Master Plan (described above in Article 4.2) is not approved by Town Council for the Town within four (4) years after the Effective Date of this Lease or Business Plan (described above in Article 4.3) is not approved by Town Council for the Town within four (4) years after the Effective Date of this Lease. Upon such termination, Mitchelville shall restore, within sixty (60) days after such termination, any part of the Property which has been altered by Mitchelville and which (1) has not been maintained in a reasonably safe, neat, clean, and ordinary manner, or (2) is in a state of disrepair or in an unkempt state, or (3) consists of trash, rubbish, debris, or related items, to its state which existed immediately prior to the Effective Date of this Lease. Town Council, in its sole discretion, may choose to extend, modify, waive or extinguish this 4 year deadline by adoption of an Ordinance prior to the 4 year deadline.~~

## ARTICLE 6

6.1. **Quiet Enjoyment:** The Town hereby covenants that Mitchelville shall, during the Lease terms, enjoy peaceable and quiet possession of the Property, and shall have, hold, and enjoy the Property without suit, trouble, or hindrance from the Town, except as expressly required or permitted by this Lease. The Town shall not interfere with the

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quiet use and enjoyment of the Property by Mitchelville during the Lease Term, so long as the Initial Lease Term or any Renewal Lease Term shall be in effect and all obligations of Mitchelville hereunder, have been fulfilled.

### ARTICLE 7

7.1. **Required Property Insurance:** During the Initial Lease Term and any Renewal Lease Term, Mitchelville shall keep buildings and structures located on the Property insured against loss or damage by fire, wind, flood (to the extent of any available federal flood insurance program), and all other perils as are typically insured against by commercial establishments operating in Beaufort County, South Carolina, to the extent of the value thereof. The Town shall be named as an additional insured on this policy or these policies.

7.2. **Required Liability Insurance:** During the Initial Lease Term and any Renewal Lease Term, Mitchelville shall maintain in full force and effect comprehensive general public liability insurance with minimum bodily injury, death, and property damage, per occurrence, of FIVE MILLION (\$5,000,000.00) DOLLARS insuring against any and all liability of Mitchelville with respect to its occupants and use of the Property and all of the improvements, structures, and buildings on the Property, or arising out of the maintenance, use, or occupancy thereof by Mitchelville. In addition to all other coverages, and if available, such insurance policy or policies shall specifically insure the performance by Mitchelville of the hold harmless and indemnity provisions set forth in Article 3.4 of this Lease.

7.3. **Policy Form:** All policies of insurance provided for herein shall be issued by insurance companies with a general policyholders' rating not less than A, and a financial rating of AAA as rated in the most current available "Best's Insurance Reports", and qualified to do business in the State of South Carolina, and shall be issued in the names of the Town, Mitchelville, and such other persons or firms as the Town reasonably specifies from time to time. Such policies shall be for the mutual and joint benefit and protection of the Town, Mitchelville, and others hereinabove mentioned, and executed copies of such policies of insurance or certifications thereof shall be delivered to the Town within ten (10) days after delivery of possession of the Property to Mitchelville and thereafter within thirty (30) days prior to the expiration of the term of each such policy. All public liability and property damage policies shall contain a provision that the Town, although name as an insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its servants, agents, and employees by reason

## Exhibit B

of the negligence of Mitchelville. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Mitchelville in like manner and to like extent. All policies of insurance delivered to the Town must contain a provision that the company writing said policy will give the Town twenty (20) days' notice in writing in advance of any cancellation or lapse or the effective date of any reduction in the amounts of insurance. All public liability, property damage and other casualty shall be written as primary policies, not contributing with and not in excess of coverage that the Town may carry.

7.4. **Town May Obtain Insurance:** In lieu of Mitchelville procuring and maintaining insurance required by this Article 7, the Town may, in its sole discretion at any time and from time to time with reasonable notice to Mitchelville, choose to procure and maintain all or any part of the insurance required by this Article 7, and pay any premiums therefor, in which even Mitchelville shall repay the Town all sums so paid by the Town within ten (10) days following the Town's written demand to Mitchelville for such payment.

7.5. **Failure of Mitchelville to Obtain Insurance:** If Mitchelville fails to procure or maintain any insurance required by this Article 7, or fails to carry insurance required by law or governmental regulations, then the Town may, but without obligation to do so, at any time and from time to time without notice, procure such insurance and pay the premiums therefor, in which event Mitchelville shall repay the Town all sums so paid by the Town, together with interest thereon as provided in Article 11 hereof, and any incidental costs or expenses incurred by the Town in connection therewith, within ten (10) days following the Town's written demand to Mitchelville for such payment.

7.6. **Additional Insurance:** Mitchelville may, but is not required to, obtain additional insurance beyond what is required by Article 7, including but not limited to contents, business interruption, and abuse/molestation insurance.

## ARTICLE 8

8.1. **Assignment Prohibited:** This Lease shall not be assigned by Mitchelville.

8.2. **Sublease of the Property:** Mitchelville shall not sublet any part of the Property, without the prior written approval of the Town Manager acknowledging that the sublease complies with the Permitted Use, which approval by the Town Manager shall not be unreasonably withheld. For the purpose of this Lease, a sublease of the Property is any lease by Mitchelville of any part of the Property to a third party for a

## Exhibit B

period that exceeds six (6) months. Any sublease must be in keeping with the Permitted Use. Nothing herein prohibits Mitchelville from contracting with subcontractors, licensees, vendors, or others in furtherance of the Permitted Use.

**8.3. Other Encumbrances Prohibited:** Mitchelville shall not grant any easements, licenses, or rights-of-way encumbering, or enter into any agreement which would in any way affect or encumber, the title to the Property; provided, however, that the Town, as the Property owner, agrees to grant to Mitchelville or others, as the case may be, any easements, licenses, or rights-of-way that are necessary for Mitchelville to use the Property in accordance with, and in furtherance of, the Permitted Use, such as any easements, licenses, or rights-of-way for utility lines, on terms that are reasonably acceptable to the Town. If any request of Mitchelville contemplated in this Article 8 requires the adoption of an ordinance or other legislation, the failure of the Town to adopt any such ordinance or legislation shall not be deemed a breach of this Lease.

### ARTICLE 9

**9.1. Notices:** All notices, certificates, or other communications required hereunder shall be deemed delivered when delivered in person, or mailed by regular first class mail, postage prepaid, addressed as follows, or to such other addresses as may be designated, in writing, by the Parties:

To the Town:	TOWN OF HILTON HEAD ISLAND Town Manager One Town Center Court Hilton Head Island, SC 29928
With copy to:	TOWN OF HILTON HEAD ISLAND Legal Department One Town Center Court Hilton Head Island, SC 29928
To Mitchelville:	Historic Mitchelville Freedom Park, Inc. Ms. Shirley Peterson P.O. Box 21758 Hilton Head Island, SC 29925
With copy to:	Chester C. Williams, Esq. Law Office of Chester C. Williams, LLC 17 Executive Park Road, Suite 2 PO Box 6028 Hilton Head Island, SC 29938-6028

## Exhibit B

### ARTICLE 10

10.1. **Events of Default Defined:** The following shall be Events of Default under this Lease:

- (a) **Failure to Observe Requirements:** The failure of Mitchelville or the Town to observe or perform any covenant, condition, obligation or agreement contained in this Lease, required to be observed or performed, for a period of one hundred twenty (120) days after delivery of written notice specifying such failure and demand that it be remedied.
- (b) **Dissolution of Mitchelville:** The dissolution, termination, or liquidation of Mitchelville, or the voluntary or involuntary commencement of any proceeding under any State or Federal law relating to bankruptcy, insolvency, assignment for the benefit of creditors, reorganization, readjustment of debtor any other form of creditor action or debtor relief, either by Mitchelville or against Mitchelville, or any change in the tax-exempt, not-for-profit status of Mitchelville.
- (c) **Abandonment of the Property:** The abandonment of the Property by Mitchelville, or the discontinuance of operations at the Property by Mitchelville.
- (d) **Use Inconsistent with this Lease or the Permitted Use:** Any use of all or any part of the Property or the structures and improvements thereon, other than in compliance with the Permitted Use, the Master Plan, or this Lease without the approval of the Town Council.
- (e) **Failure to Pay Amounts Due:** The failure to pay any sum due to the Town by Mitchelville under any provision of this Lease.
- ~~(f) **Failure to Submit the Master Plan:** The failure of Mitchelville to submit the Master Plan to the Town Council for review and approval within four (4) years of the Effective Date hereof, as required in Article 4.2 of this Lease.~~



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~~(g) **Failure to Submit the Business Plan:** The failure of Mitchelville to submit the Business Plan to the Town for review and approval within four (4) years of the Effective Date hereof as required in Article 4.3 of this Lease.~~

10.2. **Remedies on Default:** Whenever any Event of Default described in Article 10.1 of this Lease shall have happened and continue for a period of one hundred twenty (120) days after delivery of written Notice of Default, the non-defaulting Party shall have the right to terminate this Lease. If the Town is the non-defaulting party, it may give notice to Mitchelville to vacate the Property, and may thereafter evict Mitchelville from the Property, take possession thereof, and exercise all the rights and remedies provided herein. At any time within sixty (60) days after such Notice of Default and demand, either Party may initiate a mandatory, non-binding mediation proceeding, which shall be completed within one hundred twenty (120) days of the date of the Notice of Default. In no event shall enforcement by the Town of its rights under this Article 10 cause Mitchelville to be relieved of any of its obligations set forth in this Lease.

10.3. **No Remedy Exclusive:** No remedy conferred upon or reserved to the Parties is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy hereunder now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right and power and such right and power may be exercised from time to time and as often as may be deemed expedient in the sole discretion of the Parties.

10.4. **Waivers:** If any agreement contained herein is breached by either Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

10.5. **Agreement to Pay Attorney's Fees and Expenses:** If either Party hereto defaults under any of the provisions hereof, and the non-defaulting Party employs attorneys, or incurs other expenses for the enforcement of the performance or observance of any obligation or agreement on the part of the defaulting Party, the defaulting Party agrees that it shall pay, on demand, the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting Party in the enforcement of its rights hereunder.

10.6. **Discontinuance of Proceedings:** In case either Party hereto has proceeded to enforce any right under this Lease, and such proceedings shall have been

## Exhibit B

discontinued or abandoned for any reason, then and in every such case the Town and Mitchelville shall be restored respectively to their several positions and rights hereunder, and all rights, obligations, remedies, and powers of the Town and Mitchelville shall continue as though no such proceeding had been taken.

### ARTICLE 11

11.1. **Interest on Past Due Obligations:** Whenever under any provisions of this Lease Mitchelville shall be obligated to make any payment or expenditure to the Town, or to do any act or thing, or to incur any liability whatsoever, and Mitchelville fails, refuses, or neglects to perform as herein required, the Town shall be entitled, but shall not be obligated, to make any such payment or expenditure, or do any such act or thing, or to incur any such liability, all on behalf and at the cost and for the account of Mitchelville, and in such event the amount thereof with interest thereon as hereinafter provided shall be deemed due upon demand for payment thereof by the Town. Any amount due from Mitchelville to the Town under this Lease which is not paid when due shall bear interest at the Applicable Federal Rate as established by the Internal Revenue Service from the date due until paid, unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default by Mitchelville under this Lease.

### ARTICLE 12

12.1. **Binding Effect:** This Lease shall inure to the benefit of and shall be binding upon Mitchelville and the Town.

12.2. **Amendment, Changes, and Modifications:** Except as otherwise provided herein, this Lease may not be amended, changed, modified, or altered without written consent of both Parties hereto.

12.3. **Severability:** If any provision of this Lease is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

12.4. **Execution in Counterparts:** This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

## Exhibit B

12.5. **Applicable Law:** This Lease shall be governed by and construed in accordance with the laws of the State of South Carolina.

12.6. **Captions:** The captions or headings herein are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Lease.

12.7. **Recording:** Either Party may record a short form memorandum of this Lease in the Office of the Register of Deeds for Beaufort County, South Carolina.

12.8. **No Agency:** The Parties hereto intend only to provide for a Lease of real property as provided herein, and affirmatively state that no master/servant, principal/agent, or employer/employee relationship is created by this Lease. Nothing herein creates any relationship between the Town and Mitchelville other than that which is expressly stated herein. No employee, volunteer, or agent of Mitchelville shall be considered an employee or agent of the Town for any purpose whatsoever and none shall have any status, right or benefit of employment with Town.

12.9. **Plural/Singular:** Where appropriate, the use of the singular herein shall include and be deemed to be the plural, and the use of the plural herein shall be deemed to include the singular.

12.10. **No Third Party Beneficiaries:** The Parties hereto affirmatively represent that this Lease is made solely for the benefit of the Parties hereto and not for the benefit of any third party who is not a signature Party hereto. No person or entity other than the Town and Mitchelville shall have any enforceable rights hereunder, or have any right to the enforcement hereof, or any claim for damages as a result of any alleged breach hereof.

(SIGNATURE PAGES FOLLOW)

Exhibit B

In Witness whereof, the Parties hereto, by and through their duly authorized officers, have set their hands and seals as of this \_\_\_\_\_ Day of \_\_\_\_\_, 2021 ~~19~~.

**WITNESSES:**

**THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA**

\_\_\_\_\_

By: \_\_\_\_\_ (L.S.)  
John McCann, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_ (L.S.)  
~~Stephen G. Riley, ICMA~CM~~  
Marc Orlando, ICMA~CM  
Town Manager

**WITNESSES:**

**HISTORIC MITCHELVILLE FREEDOM PARK, INC.**

\_\_\_\_\_

By: \_\_\_\_\_ (L.S.)  
Shirley Peterson, President

\_\_\_\_\_

Attest: \_\_\_\_\_ (L.S.)  
\_\_\_\_\_, Secretary



# TOWN OF HILTON HEAD ISLAND

## *Community Development Department*

**TO:** Marc Orlando, *ICMA~CM, Town Manager*  
**VIA:** Jennifer Ray, *ASLA, Interim Community Development Director*  
**VIA:** Teri Lewis, *AICP, Deputy Community Development Director*  
**FROM:** Shari Mendrick, *P.G., CFM, Floodplain Administrator*  
**CC:** Shawn Colin, *AICP, Interim Deputy Town Manager*  
**DATE:** February 18, 2021  
**SUBJECT:** Calculation of Height and Flood Zone Standards LMO Amendments

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### **Recommendation:**

That Town Council approve the proposed Calculation of Height and Flood Zone Standards LMO Amendments.

The Public Planning Committee will hold a public meeting on February 25, 2021, at which time they will review and provide a recommendation on the proposed Calculation of Height and Flood Zone Standards LMO Amendments. Town staff will provide Public Planning Committee's recommendation to Town Council during the March 2, 2021 meeting.

The Planning Commission held a public hearing on February 17, 2021 to review the proposed amendments. Planning Commission voted 9-0 to recommend that Town Council approve the amendments with the following change:

- Residential building height shall be measured from 14' above mean sea level rather than 13' above mean sea level as proposed by staff.

The recommended change has been incorporated into the proposed amendments.

### **Summary:**

The current Land Management Ordinance (LMO) Section 16-10-102.C states that building heights shall be measured from the base flood elevation. If the site does not lie within a flood zone with a designated base flood elevation, the maximum structure height shall be calculated from pre-development grade.

To maintain consistency between the proposed changes to the lowest floor elevation requirements of the Flood Damage Controls Ordinance and the maximum building height measurement in the LMO, staff is proposing the following changes to the Town's building height requirements:

1. Residential building height shall be measured from 13' above mean sea level. This change will have minimal to no negative impact as noted below:
  - Minimal change to footprint of regulated vs. unregulated residential construction.
  - No increase to maximum building heights. Minor decreases in a few areas.
  - No drastic height deviations between new and existing construction.
  - Allows for parking under structures to meet minimum parking requirements without further reducing required buffers.

2. Nonresidential building height shall be measured from 11' above mean sea level. This change will have positive impacts as noted below:
  - Offers flexibility for redevelopment of underperforming and vacant commercial property without being overly restrictive.
  - Discourages the use of excessive fill to meet elevation requirements.

In conjunction with the adoption of the updated Flood Insurance Rate Maps (FIRMs), the flood zone designations in Section 16-5-112 of the LMO must be updated for consistency with the new flood zones on the updated FIRMs.

**Background:**

The Town of Hilton Head Island is a participant in the National Flood Insurance Program. As a participant, FEMA conducts flood hazard analyses and mapping studies to generate Flood Insurance Rate Maps (FIRMs) that display areas that fall within the 100-year flood boundary. The term 100-year flood indicates that the area has a one-percent chance of flooding in any given year, not that a flood will occur once every 100 years. The maps are only intended to convey potential flood risk and do not predict storm surge, flooding due to sea level rise or flooding caused by local storm drainage issues.

FEMA released preliminary FIRMs for Beaufort County in November 2017 and these maps will become effective for flood insurance rating on March 23, 2021. FEMA uses the best available technical data to create flood hazard maps; however the modeling for these maps was completed prior to local impacts of Hurricanes Matthew, Irma and Dorian. The storm surge and associated beach erosion from these storms resulted in the removal of the Town's primary frontal dune system, which drastically changes the modeling dynamics for a barrier island.

The updated data shows a 5-6 foot decrease in current base flood elevations across the Town. The updated data includes a 1-foot decrease directly related to the transition from NGVD29 to NAVD88, which is the vertical sea level reference used by surveyors.

The drastic reduction in base flood elevations is of great concern as several areas with repeated flood losses, such as beachfront homes and homes in low-lying areas, are being removed from the high-risk flood zone. Implications of these flood maps changes without consideration of the current lowest floor elevation requirements in the Town's Municipal Code Section 15-9, Flood Damage Controls, will result in a higher potential for flood losses in our community. The changes to the LMO, in conjunction with the changes to the Municipal Code, promote resilient design and construction and provide a higher level of protection from flood damages throughout the Town.

Newly added language is illustrated with double underline and deleted language is illustrated with ~~strikethrough~~.

**Exhibit:**

- A. Flood Zone Standards and Rules of Measurement, Calculation of Height LMO Amendments

## EXHIBIT A

### Chapter 16-5: Development and Design Standards

#### Sec.16-5-112. - Flood Zone Standards

##### A. Applicability

2. The location of the *flood* zones on Hilton Head Island ~~is are identified by the shown on the FEMA Flood Hazard Zones Map of the Comprehensive Plan, which is adopted as part of this Ordinance, or any more recent Town-adopted flood zones map.~~ Flood Insurance Rate Maps (FIRMs).
3. The Island is covered by the following ~~four~~ *flood* zones that range from most vulnerable to flooding and *flood* damage to least vulnerable:
  - a. VE-Zone, or *coastal high hazard area*, subject to 100-year coastal flooding and storm surge;
  - b. Coastal A Zone, or the area landward of a V-zone and seaward of the Limit of Moderate Wave Action as shown on the FIRMs.
  - ~~bc.~~ AE-Zone, or 100-year *flood* plain area;
  - d. AO Zone, or areas of shallow flooding;
  - ~~ee.~~ B-X(shaded) Zone, or 100 to 500-year *flood* plain area; and
  - ~~df.~~ C-X Zone, or areas of minimal flooding.

##### B. Flood Zone Standards

On all plats within "VE" or "AE" zones for which *lots*, *sites*, or *structures* are to be sold, the following statement shall be clearly affixed to the plat and shall be recorded:

Some or all areas on this plat are *flood* hazard areas and have been identified as having at least a one percent chance of being flooded in any given year by rising tidal waters associated with possible hurricanes. Local regulations require that certain *flood* hazard protective measures be incorporated in the design and *construction* of *structures* in these designated areas. Reference shall be made to the *development* covenants and restrictions of this *development* and requirements of the Town Building Official. In addition, federal law requires mandatory purchase of *flood* insurance as a prerequisite to federally insured mortgage financing in these designated *flood* hazard areas.

## Chapter 16-10: - Definitions, Interpretation, and Measurement

### Sec.16-10-102. - Rules of Measurement

#### C. Height

##### 1. Calculation of Height

- a. Maximum *structure height* for *development* in each zoning district shall be calculated as follows: from the ~~base flood elevation~~. If the ~~site~~ does not lie within a ~~flood~~ zone with a designated ~~base flood elevation~~, the maximum *structure height* shall be calculated from *pre-development grade*.
  - i. Residential maximum building height shall be measured from fourteen feet (14') above mean sea level using the NAVD 88 vertical datum; and
  - ii. Nonresidential maximum building height shall be measured from eleven feet (11') above mean sea level using the NAVD 88 vertical datum.
- b. The measurement of the *height* of a *structure* shall be the distance from the *height* as determined by 16-10-102.C.a ~~preconstruction grade or base flood elevation~~ immediately *adjacent* to the *structure* to a point level with the highest point of the *structure*.



**AN ORDINANCE TO AMEND TITLE 16 OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, THE LAND MANAGEMENT ORDINANCE (LMO), CHAPTERS 5 AND 10. THESE AMENDMENTS, COMMONLY REFERRED TO AS *FLOOD MAP LMO AMENDMENTS* AS NOTICED IN THE ISLAND PACKET ON *JANUARY 17, 2021*, INCLUDE CHANGES THAT MODIFY THE FLOOD ZONE STANDARDS FOR CONSISTENCY WITH THE MARCH 23, 2021 FLOOD INSURANCE RATE MAPS AND MODIFY THE RULE OF MEASUREMENT FOR THE CALCULATION OF BUILDING HEIGHT, AS DESCRIBED IN EXHIBIT “A” TO THIS ORDINANCE, AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, on October 7, 2014, the Town Council did adopt a new Land Management Ordinance (LMO); and

**WHEREAS**, from time to time it is necessary to amend the LMO; and

**WHEREAS**, the Town of Hilton Head Island Flood Insurance Rate Maps (FIRMs) have been updated by the Federal Emergency Management Agency (FEMA); and

**WHEREAS**, the Town will adopt these new Flood Insurance Rate Maps effective March 23, 2021; and

**WHEREAS**, to maintain consistency between the proposed changes to the lowest floor elevation requirements of the Flood Damage Controls Ordinance and the maximum building height measurement in the LMO, staff is proposing changes to the Town’s building height requirements; and

**WHEREAS**, in conjunction with the adoption of the updated Flood Insurance Rate Maps, the flood zone designations in the LMO must be updated for consistency with the new flood zones on the updated FIRMs; and

**WHEREAS**, the LMO Committee held a public meeting on December 14, 2020 at which time a presentation was made by Staff and an opportunity was given for the public to comment on the proposed LMO amendments; and

**WHEREAS**, the LMO Committee recommended that the proposed LMO amendments be forwarded to the Planning Commission with a recommendation of approval; and

**WHEREAS**, the Planning Commission held a public hearing on February 17, 2021 at which time a presentation was made by Staff and an opportunity was given for the public to comment on the proposed *Flood Map LMO Amendments*; and

**WHEREAS**, after consideration of the Staff presentation the Planning Commission voted 9-0 to forward the proposed LMO amendments to the Public Planning Committee with a

recommendation of approval with the following change: residential building height shall be measured from 14' above mean sea level; and

**WHEREAS**, the Public Planning Committee held a public meeting on February 25, 2021 at which time a presentation was made by Staff and an opportunity was given for the public to comment on the proposed LMO amendments; and

**WHEREAS**, after consideration of the Staff presentation and public comments, the Public Planning Committee voted <> to recommend <> of the proposed LMO amendments; and

**WHEREAS**, after due consideration of said LMO amendments, the Town Council, upon further review, finds it is in the public interest to approve the proposed *Flood Map LMO Amendments*.

**NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND IT IS ORDAINED BY THE AUTHORITY OF THE SAID COUNCIL:**

**Section 1. Amendment.** That the *Flood Map LMO Amendments* are adopted and the Land Management Ordinance is amended as shown on Exhibit "A" to this Ordinance. Newly added language is illustrated with double underline and deleted language is illustrated with ~~strikethrough~~.

**Section 2. Severability.** If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**Section 3. Effective Date.** This Ordinance shall be effective upon its adoption by the Town Council of the Town of Hilton Head Island, South Carolina.

**PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.**

THE TOWN OF HILTON HEAD  
ISLAND, SOUTH CAROLINA

\_\_\_\_\_  
John J. McCann, Mayor

ATTEST:

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Krista Wiedmeyer, Town Clerk

First Reading:

Second Reading:

APPROVED AS TO FORM:

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Curtis L. Coltrane, Town Attorney

Introduced by Council Member:



# TOWN OF HILTON HEAD ISLAND

## *Community Development Department*

**TO:** Marc Orlando, *ICMA~CM, Town Manager*  
**VIA:** Jennifer Ray, *ASLA, Interim Community Development Director*  
**VIA:** Teri Lewis, *AICP, Deputy Community Development Director*  
**FROM:** Shari Mendrick, *P.G., CFM, Floodplain Administrator*  
**CC:** Shawn Colin, *AICP, Interim Deputy Town Manager*  
**DATE:** February 18, 2021  
**SUBJECT:** Proposed Ordinance 2021-07; Revisions to Title 15, Chapter 9

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### **Recommendation:**

That Town Council approve the proposed Revisions to Title 15, Chapter 9 of the Municipal Code.

The Public Planning Committee will hold a public meeting on February 25, 2021, at which time they will review and provide a recommendation on the proposed Revisions to Title 15, Chapter 9 of the Municipal Code. Town staff will provide Public Planning Committee's recommendation to Town Council during the March 2, 2021 meeting.

### **Summary:**

The adoption of these amendments will officially adopt the updated Flood Insurance Rate Maps (FIRMs), effective March 23, 2021 and revise language and defined terms to be consistent with the National Flood Insurance Program (NFIP) regulations 44 CFR Parts 59 and 60, the State of South Carolina Model Flood Damage Controls Ordinance, and the International Building Code.

Title 15, Chapter 9 of the Town's Municipal Code currently requires that the lowest floor of construction in the Special Flood Hazard Area (SFHA) be elevated to one foot above the base flood elevation, which is the minimum standard for construction in the SFHA. Due to drastic reductions in the geographic area of the SFHA and the associated base flood elevations and to maintain consistency between the proposed changes to the lowest floor elevation requirements of the Flood Damage Controls Ordinance and the maximum building height measurement in the LMO, staff is proposing the following changes to the Town's lowest floor requirements:

1. Residential lowest floor requirement shall be the base flood elevation plus three feet or 13' above mean sea level using NAVD88, whichever is higher. This change will have minimal to no negative impact as noted below:
  - Minimal change to footprint of regulated vs. unregulated residential construction.
  - No increase to maximum building heights. Minor decreases in a few areas.
  - No drastic height deviations between new and existing construction.
  - Allows for parking under structures to meet minimum parking requirements without further reducing required buffers.

2. Nonresidential lowest floor requirement shall be the base flood elevation plus two feet or 11' above mean sea level using NAVD88, whichever is higher. This change will have positive impacts as noted below:
  - Offers flexibility for redevelopment of underperforming and vacant commercial property without being overly restrictive.
  - Discourages the use of excessive fill to meet elevation requirements.

As a part of the map adoption process, the State NFIP Coordinator reviewed the Town Ordinance and identified language that was not consistent with terms and definitions contained in the Federal Regulations and the State of South Carolina Model Flood Damage Prevention Ordinance. The proposed amendments also address these inconsistencies.

**Background:**

The Town of Hilton Head Island is a participant in the National Flood Insurance Program. As a participant, FEMA conducts flood hazard analyses and mapping studies to generate Flood Insurance Rate Maps (FIRMs) that display areas that fall within the 100-year flood boundary. The term 100-year flood indicates that the area has a one-percent chance of flooding in any given year, not that a flood will occur once every 100 years. The maps are only intended to convey potential flood risk and do not predict storm surge, flooding due to sea level rise or flooding caused by local storm drainage issues.

FEMA released preliminary FIRMs for Beaufort County in November 2017 and these maps will become effective for flood insurance rating on March 23, 2021. FEMA uses the best available technical data to create flood hazard maps; however the modeling for these maps was completed prior to local impacts of Hurricanes Matthew, Irma and Dorian. The storm surge and associated beach erosion from these storms resulted in the removal of the Town's primary frontal dune system, which drastically changes the modeling dynamics for a barrier island.

The updated data shows a 5-6 foot decrease in current base flood elevations across the Town. The updated data includes a 1-foot decrease directly related to the transition from NGVD29 to NAVD88, which is the vertical sea level reference used by surveyors.

The drastic reduction in base flood elevations is of great concern as several areas with repeated flood losses, such as beachfront homes and homes in low-lying areas, are being removed from the high-risk flood zone. Implications of these flood maps changes without consideration of the current lowest floor elevation requirements in the Town's Municipal Code Section 15-9, Flood Damage Controls, will result in a higher potential for flood losses in our community. The changes to the LMO, in conjunction with the changes to the Municipal Code, promote resilient design and construction and provide a higher level of protection from flood damages throughout the Town.

Newly added language is illustrated with double underline and deleted language is illustrated with ~~strikethrough~~.

**Exhibit:**

- A. Title 15, Chapter 9 Flood Damage Controls

## EXHIBIT A

### Chapter 9 - FLOOD DAMAGE CONTROLS<sup>[6]</sup>

Footnotes:

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**Editor's note**— [Ord. No. 2019-03](#), § 1(Att. 1), adopted Feb. 19, 2019, amended ch. 9 in its entirety to read as herein set out. Former ch. 9, §§ 15-9-111, 15-9-112, 15-9-211—15-9-214, 15-9-311—15-9-317, 15-9-411, 15-9-511, 15-9-512, 15-9-611—15-9-614, pertained to similar subject matter, and derived from Ord. No. 01-07, § 1, adopted June 5, 2001; and Ord. No. 2011-09, § 1, adopted June 21, 2011.

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Staff Explanation: This change removes conflicting heading.

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#### ARTICLE 1. - ~~FINDINGS OF FACT AND PURPOSE~~ GENERAL STANDARDS

Sec. 15-9-110. - Statutory authorization.

The Legislature of the State of South Carolina has in SC Code of Laws, Title 5 and Title 6, and amendments thereto, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Town of Hilton Head Island, South Carolina does ordain as follows:

([Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-111. - Findings of fact.

The special flood hazard areas of the Town of Hilton Head Island are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruptions of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of tax base all of which adversely affect the public health, safety and welfare.

These flood losses are caused by the cumulative effect of obstructions of floodplains causing increases in flood heights and velocities, and by the occupancy of flood hazard areas by structures vulnerable to floods or hazardous to other lands which are inadequately elevated, floodproofed, or otherwise protected from flood damages.

([Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-112. - Statement of purpose.

It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in flood hazard areas by provisions designed to:

- (a) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities;
- (b) Require that buildings vulnerable to floods, including facilities which serve such buildings, be protected against flood damages at the time of initial construction.
- (c) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

- (d) Control filling, grading, and other development which may increase erosion or flood damage or erosion.
- (e) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters.

( [Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

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Staff Explanation: This section has been modified for consistency with the state model ordinance as requested by State Coordinator's office and to include the regulation of all lands within the Town's jurisdiction.

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Sec. 15-9-113. - ~~Basis for area of special flood hazard.~~ Lands to which this ordinance applies.

This chapter shall apply to:

(a) All areas of special flood hazard within the jurisdiction of the Town of Hilton Head Island, SC, as identified by the Federal Emergency Management Agency (FEMA) in its Flood Insurance Study, dated March 23, 2021 with accompanying maps and other supporting data that are hereby adopted by reference and declared to be a part of this ordinance, and

(b) All other areas under the jurisdiction of the Town of Hilton Head Island.

Upon annexation, any special flood hazard areas identified by the Federal Emergency Management Agency in its Flood Insurance Study for the unincorporated areas of Beaufort County, with accompanying maps and other data are adopted by reference and declared part of this ordinance.

~~The flood hazard areas of the town have been identified by the Federal Insurance Administration through a scientific and engineering report entitled "The Flood Insurance Study for the County of Beaufort," dated September 30, 1977, Federal Register Vol. 41, No. 207, pages 46,962-46,992, dated Tuesday, October 26, 1976, and subsequent supplement titled "Wave Height Analysis," dated June 4, 1984; with accompanying flood insurance rate maps and flood boundary maps, dated September 30, 1977, and subsequent maps adding wave heights dated December 4, 1984, as reevaluated and effective September 29, 1986, are hereby adopted by reference and declared to be part of this chapter.~~

( [Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-114. - Establishment of land development application and building permit.

The approval of a land development application shall be required in conformance with title 16 and the provisions of this chapter prior to the commencement of any development activities. A building permit shall be required in conformance with title 15, title 16, and the provisions of this chapter prior to the commencement of any construction activities.

( [Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-115. - Interpretation.

In the interpretation and application of this chapter all provisions shall be considered as minimum requirements and deemed neither to limit nor repeal any other powers granted under state law. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another conflict or overlap, whichever imposes the more stringent restrictions, shall prevail.

( [Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-116. - Partial invalidity and severability.

If any part of this article is declared invalid, the remainder of the article shall not be affected and shall remain in force.

( [Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-117. - Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the town or on the part of any officer or employee of the town for any flood damages that result from reliance on this chapter or that are attributable to any administrative decision lawfully made under this chapter.

( [Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-118. - Penalties for violation.

Violation of the provisions of this chapter or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variances or special exceptions, shall constitute an offense. Any person who violates any provision of this chapter or who fails to comply with any of its requirements shall, upon conviction thereof, be subject to fine or imprisonment, or both, as provided in section 1-5-10. Each day any violation continues shall be considered a separate offense. Nothing contained in this section shall prevent the town from taking such other lawful action as is necessary to prevent or remedy any violation.

( [Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

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Staff Explanation: Definitions have been added or modified for consistency with the state model ordinance as suggested by the State Coordinator's Ordinance comments.

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Sec. 15-9-119. - Definitions.

For the purposes of this chapter, the following definitions shall apply:

*Accessory structure* means a ~~building or~~ structure subordinate and incidental to, and located on the same lot with ~~,-~~a principal ~~structure building and use~~, the use of which is customarily found in association with and is clearly incidental to that of the main ~~building-structure or to the use of the land~~, and which is not attached by any part of a common wall or roof to the principal ~~structure building~~. Accessory structures should constitute a minimal investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.

*Addition (to an existing structure)* means any walled and roofed expansion to the perimeter of a structure in which the addition is connected by a roof or common load-bearing wall other than a firewall. Any walled and roofed addition which is connected by a fire wall is considered "new construction."

*Appeal* is a request for a review of the local floodplain administrator's interpretation of any provision of this ordinance.



Area of Shallow Flooding means a designated AO or VO zone on a community's Flood Insurance Rate Map (FIRM) with base flood depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of special flood hazard ~~see Special Flood Hazard Area.~~ means the land in the floodplain within a community subject to a one-percent or greater chance of being equaled or exceeded in any given year.

Base flood means the flood having a one-percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE) means the computed elevation to which floodwater is anticipated to rise during the base flood. The BFE is the regulatory requirement for the elevation or floodproofing of structures. The relationship between the BFE and a structure's elevation determines the flood insurance premium.

Building ~~see Structure.~~ means any structure having two (2) or more exterior rigid walls and a roof supported by columns or walls and intended for the shelter, housing or enclosure of any person, commercial or business activity, process, equipment or goods. Each portion of a building separated from other portions by a firewall shall be considered as a separate building.

Coastal A zone means the area landward of a V Zone where the principal source of flooding will be astronomical tides, storm surges or tsunamis, not riverine flooding. During base flood conditions, the potential for breaking wave heights between 1.5 feet and 3.0 feet will exist. Areas considered to be within the Coastal A Zones are landward of the V Zone and seaward of the line denoted as the Limit of Moderate Wave Action (LiMWA) on the FIRM.

Coastal High Hazard Area means an area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to velocity wave action from storms or seismic sources. This area is designated as Zone V, VE or V1-30.

~~Construction~~ means the erection of any building or structure or any preparations (including land disturbing activities) for the same.

Development, for floodplain management purposes, means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, and storage of materials or equipment. ~~the use of a structure or land; or the construction, reconstruction or alteration of a structure; or an increase in land use intensity; or filling or excavating a parcel; or a change in effects or conditions of a site; or the alteration of a shore, bank or floodplain; or the construction or extension of a utility; or the subdivision of land.~~

Enclosure means partially or fully walled areas below the lowest floor of an elevated building.

Existing manufactured home park or manufactured home subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before September 30, 1977.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs).

Flood means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters or from rain.

Flood insurance rate map (FIRM) means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Flood insurance study means the official report provided by the Federal Emergency Management Agency which contains flood profiles and the water surface elevation of the base flood.

*Floodproofing* means any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

*Functionally dependent use* means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

*Historic structure* means any structure that is: (a) listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of the Interior (DOI)) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places; (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified (1) by an approved state program as determined by the Secretary of Interior, or (2) directly by the Secretary of Interior in states without approved programs. Some structures or districts listed on the state or local inventories MAY NOT be "Historic" as cited above, but have been included on the inventories because it was believed that the structures or districts have the potential for meeting the "historic" structure criteria of the DOI. In order for these structures to meet NFIP historic structure criteria, it must be demonstrated and evidenced that the South Carolina Department of Archives and History has individually determined that the structure or district meets DOI historic structure criteria.

*Increased cost of compliance (ICC)* means applies to all new and renewed flood insurance policies effective on and after June 1, 1997. The NFIP shall enable the purchase of insurance to cover the cost of compliance with land use and control measures established under Section 1361. It provides coverage for the payment of a claim to help pay for the cost to comply with state or community floodplain management laws or ordinances after a flood event in which a building has been declared substantially or repetitively damaged.

*Land development application* means application for development and use of property as required by title 16 "Land Management Ordinance of the Town of Hilton Head Island," including, but not limited to, subdivision review (major and minor), development plan review (major or minor), small residential development review and utility project permit.

*Limit of Moderate Wave Action* means the boundary line given by FEMA on coastal map studies marking the extent of Coastal A Zones.

*Lowest floor* means the lowest floor of the lowest enclosed area. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

*Manufactured home* means a factory-built, single-family structure that is manufactured under the authority of 42 USC Section 5401 and that is transportable in one (1) or more sections, is built on a permanent chassis, but is not constructed with a permanent hitch or other device allowing transport of the unit other than for the purpose of delivery to a permanent site, and does not have wheels or axles permanently attached to its body or frame.

*Manufactured home park or subdivision* means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

*New construction* means structure, for which, the start of construction commenced on or after September 30, 1977. The term also includes any subsequent improvements to such structure.

*New manufactured home park or subdivision* means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs) is completed on or after September 30, 1977.

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Staff Explanation: This definition has been added to provide flexibility with the construction of nonresidential support structures, such as pool restrooms and guard stations, as not all nonresidential accessory structures are functionally equal.

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Nonresidential Auxiliary Structure means a nonresidential structure subordinate and incidental nonresidential property, less than 300 square feet in size, which may not be used for human habitation, be constructed entirely out of flood damage resistant materials and be designed to have minimal flood damage potential. Examples of nonresidential auxiliary support structures are pool restrooms, changing rooms and security guard stations.

*Recreational vehicle* means any of the following vehicles designed for travel, recreation, and vacation uses: motorhome or van (a portable, temporary dwelling constructed as an integral part of a self-propelled vehicle); pickup camper (a structure designed to be mounted on a truck chassis); recreational trailer (a portable structure built on a single chassis, four hundred (400) square feet or less when measured at the largest exterior horizontal projections); park trailer (a semi-portable structure built on a single chassis, which does not exceed four hundred (400) square feet when constructed to ANSI A-119.5 standards, and five hundred (500) square feet when constructed to USDHUD standards); or tent trailer (a canvas or synthetic fiber folding structure mounted on a hard body base and towed by a vehicle). Use of a recreational vehicle for residential or accommodation purposes is prohibited except in a recreational vehicle (RV) park.

*Repetitive loss* means a building covered by a contract for flood insurance that has incurred flood-related damages on two (2) occasions during a ten-year period ending on the date of the event for which a second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded twenty-five (25) percent of the market value of the building at the time of each such flood event.

Special flood hazard area (SFHA) means the area that will be inundated by the flood event having a one (1) percent chance of being equaled or exceeded in any given year. The one (1) percent annual chance flood is also referred to as the base flood or 100-year flood. SFHAs are zone A, zone AE, zone AO, zones A1—A30, zone V, zone VE, zones V1—V30 and Coastal A.

*Start of construction* means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, or improvement was within one hundred eighty (180) days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for footings, piers or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

Structure, for floodplain management purposes, means a walled and roofed building, as well as modular and manufactured homes and including gas or liquid storage tanks that are principally above ground, anything constructed, installed, or portable, the use of which requires a location on a parcel of land. Structure includes a fixed or movable building which can be used for residential, business, commercial, agricultural, or office purposes, either temporarily or permanently. "Structure" also includes, but is not limited to, swimming pools, cisterns, sewage treatment plants, sheds, and similar accessory construction.

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Staff Explanation: Additional CRS credit is available for lowering the substantial damage/substantial improvement threshold below 50%. Typically, contractors will keep improvements under 40% to avoid additional paperwork, so this change will have minimal impact on the building community.

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*Substantial damage* means damage of any origin sustained by a structure whereby the cost of restoring the structure to ~~its~~ before damaged condition would equal or exceed ~~forty-nine (49) fifty (50)~~ percent of the market value of the structure before the damage occurred.

*Substantial improvement* means any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds ~~forty-nine (49) fifty (50)~~ percent of the market value of the structure before the start of construction of the improvement. This term includes structures that have incurred repetitive loss or substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- (a) Any project of improvement to a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or,
- (b) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

*Substantially improved existing manufactured home park or subdivision* means where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds ~~forty-nine (49) fifty (50)~~ percent of the value of the streets, utilities and pads before the repair, reconstruction, or improvement commenced.

*Violation* means the failure of a structure or other development to be fully compliant with these regulations.

( [Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

## ARTICLE 2. - ADMINISTRATION

Sec. 15-9-211. - Designation of local floodplain administrator.

The town manager or designee is hereby appointed to administer and implement the provisions of this chapter.

( [Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-212. - Land development application or building permit and certification requirements.

- (a) Application for land development or building permit shall be made to the town prior to any development or construction activities. The town manager or designee shall require the following specific information to be included as part of an application for land development or building permit.
- (b) A plan, drawn to scale, which details the nature, location, dimensions, and elevations of the area in question; size of existing and/or proposed structures; finished ground elevation; location of fill materials, storage areas and drainage facilities, water supply, sanitary facilities and, if appropriate, floodproofing measures; and all other applicable requirements in ~~t~~Titles 15 and 16 of the ~~t~~Town's Municipal Code.
- (c) If the building structure incorporates floodproofing measures or breakaway walls, then certification is required by a registered professional engineer or architect stating that adequate precautions against flood damage have been taken with respect to the design of said building or structure, and that the plans for the development of the site adhere to the restrictions cited in this chapter.

- (d) A lowest floor elevation or floodproofing certification is required after the lowest floor is completed. As soon as possible after completion of the lowest floor and before any further vertical construction commences, or floodproofing by whatever construction means, whichever is applicable, it shall be the duty of the permit holder to submit to the local floodplain administrator a certification of the elevation of the lowest floor, or floodproofed elevation, whichever is applicable, as built, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by it. Any work done prior to submission of the certification shall be at the permit holder's risk. The local floodplain administrator shall review the floor elevation survey data submitted. The permit holder immediately and prior to further progressive work being permitted to proceed shall correct deficiencies detected by such review. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project.

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Staff Explanation: Coastal A Zones have been added to the FIRMs. These areas will be regulated the same as Zone V as required by the 2018 International Residential Code (IRC) and International Building Code (IBC).

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- (e) When a structure is located in zones V, VE, ~~or V1-30~~, or Coastal A Zone, certification shall be provided from a registered professional engineer or architect, separate from submitted plans, that new construction and substantial improvement meets the criteria for the coastal high hazard areas outlined in section 15-9-313.
- (f) Where alterations or repairs or additions are involved, the original date of construction and the current market value of the property, as defined by FEMA policy, shall be furnished by the owner of the property or his agent.

( [Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-213. - Duties and responsibilities of town manager or designee.

The town manager or designee shall:

- (a) Review all land development and building permit applications to assure that the requirements of this chapter have been satisfied.
- (b) Review proposed developments to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal, state or local law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C 1334.
- (c) Notify adjacent communities and the South Carolina Department of Natural Resources, Land, Water, and Conservation Division, State Coordinator for the National Flood Insurance Program, prior to any alteration or relocation of a watercourse, and shall submit evidence of such notification to the Federal Emergency Management Agency.
- (d) Obtain necessary engineering analysis to assure that the flood-carrying capacity within the altered or relocated portion of said watercourse is maintained.
- (e) Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding. If a subdivision or other development is in a special flood hazard area, assure that:
  - (1) Such proposals minimize flood damage and are subject to all applicable standards in these regulations;
  - (2) Public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage; and

(3) Adequate drainage is provided to reduce exposure to flood damage.

(f) Require base flood elevation data for all land development applications and building permits.

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Staff Explanation: As staff is proposing to reduce the substantial damage/substantial improvement threshold, modification of this section gives more flexible options for market value determination, as allowed by the FEMA guidance document (P-758) for Substantial Improvement/Substantial Damage.

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~~(g) Perform an assessment of damage from any origin to the structure using FEMA's Substantial Damage Estimator (SDE) software to determine if the damage equals or exceeds fifty (50) percent of the market value of the structure before the damage occurred.~~

(hg) Perform an assessment of permit applications for substantial improvements or substantial damage repairs to be made to a building or structure that equals or exceeds forty-nine (49) fifty (50) percent of the market value of the structure before the start of construction.

The market values shall be determined by one (1) of the following methods:

(1) The current assessed building value as determined by the county's assessor's office, ~~or the value of an appraisal performed by a licensed appraiser at the expense of the owner within the past six (6) months.~~

(2) ~~One (1) or more~~ A certified appraisals from a registered professional licensed appraiser in accordance with the laws of South Carolina. The appraisal shall indicate actual replacement value of the building or structure in its pre-improvement condition, less the cost of site improvements and depreciation, ~~or for functionality and obsolescence.~~

(3) ~~Real estate purchase contract within six (6) months prior to the date of the application for a permit. The computed actual cash value as determined by FEMA's Substantial Damage Estimator (SDE) software.~~

(ih) Maintain all records pertaining to the administration of this chapter and make these records available for public inspection.

( [Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

### ARTICLE 3. - FLOOD HAZARD REDUCTION STANDARDS

Sec. 15-9-311. - General standards.

In all areas ~~of special flood hazard within the jurisdiction of the Town.~~ the following provisions are required:

(a) All new construction, additions and/or substantial improvements shall be constructed by methods and practices that minimize flood damages.

(b) All structures shall be firmly anchored to prevent flotation, collapse, or lateral movement. All ducts, pipes, and storage tanks shall be firmly anchored to prevent flotation, collapse or lateral movement.

(c) All new construction and substantial improvements shall be constructed with flood resistant materials and utility equipment resistant to flood damage in accordance with Technical Bulletin 2, Flood Damage-Resistant Materials Requirements, dated 8/08, and available from the Federal Emergency Management Agency.



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Staff Explanation: Modified for clarification of current requirements and consistency with proposed lowest floor regulations in Section 15-9-312 and 15-9-313. See staff explanations below.

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(d) Electrical, heating, ventilation, plumbing, ~~and~~ air-conditioning equipment (including ductwork) and other service facilities shall be elevated as follows:

(1) For residential construction, equipment shall be elevated no lower than three feet above the base flood elevation or thirteen (13) feet above mean sea level using NAVD88, whichever is higher.

(2) For nonresidential construction, equipment shall be elevated no lower than two feet above the base flood elevation or eleven (11) feet above mean sea level using NAVD88, whichever is higher.

EXCEPTION: For nonresidential auxiliary structures:

a. In the special flood hazard area, equipment servicing the structure shall be elevated to the base flood elevation plus one foot., or

b. Outside of the special flood hazard area, equipment servicing the structure shall be located no lower than the highest adjacent grade.

If ductwork is located below the aforementioned height requirement, it must be designed ~~and/or located~~ so as to prevent water from entering or accumulating within the components during conditions of flooding-- and such design shall be certified by a South Carolina licensed engineer.

(e) Water supply systems and/or sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharges from the systems into floodwaters.

(f) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

( Ord. No. 2019-03, § 1(Att. 1), 2-19-19)

Sec. 15-9-312. - Specific standards.

In all areas ~~of special flood hazard within (zones A, AE, and A1-30, AO, Shaded X and X) where base flood elevation data has been provided~~, the following provisions are required:

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Staff Explanation: The FEMA flood maps provide the basis for minimum regulatory standards. The updated flood maps show base flood elevations are being reduced 5-7 feet within the Town's jurisdiction and a significant reduction in the footprint of the currently regulated special flood hazard area.

Staff is proposing to raise the required lowest floor requirement to the higher of three feet above the base flood elevation or 13' above mean sea level for residential construction and two feet above the base flood elevation or 11' above mean sea level for nonresidential construction.

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(a) *Residential construction.* New construction and substantial improvement of any residential structure (including manufactured homes) must be constructed so that the lowest floor, is elevated no lower than three (3) feet one (1) foot above the ~~level of the~~ base flood elevation or thirteen (13) feet above mean sea level using NAVD88, whichever is higher. i.e., the one-hundred-year flood elevation. No environmentally conditioned space shall be allowed below the lowest floor. No basements are permitted. Should solid foundation perimeter walls be used to elevate a structure, flood openings sufficient to automatically equalize hydrostatic flood forces, shall be provided in accordance with the elevated buildings requirements in section 15-9-312(f). Residential structures may not be floodproofed in lieu of elevation.

- (b) *Nonresidential construction.* New construction and substantial improvement of any nonresidential structure must be constructed so that the lowest floor is elevated no lower than ~~two (2) feet one (1) foot~~ above the ~~level of the~~ base flood elevation ~~or eleven (11) feet above mean sea level using NAVD88, whichever is higher, i.e., the one hundred-year flood elevation.~~ Should solid foundation perimeter walls be used to elevate a structure, flood openings sufficient to automatically equalize hydrostatic flood forces, shall be provided in accordance with the elevated buildings requirements in section 15-9-312(f). Nonresidential structures may be floodproofed in lieu of elevation provided that all areas of the structure below the required elevation are designed to preclude the inundation of floodwater and withstand the hydrostatic loads associated with the base flood.

A South Carolina licensed engineer or architect shall certify that the design and method of construction meet the provisions of this section. Record of certification of floodproofing shall be maintained as a public record.

EXCEPTION: Nonresidential auxiliary structures shall be elevated as follows:

- (1) In the special flood hazard area, nonresidential auxiliary structures shall be elevated to the base flood elevation plus one foot, or
- (2) Outside of the special flood hazard area, nonresidential auxiliary structures shall be elevated to no lower than the highest adjacent grade.

- (c) *Manufactured homes.* Manufactured home standards shall apply to all installations after April 1, 1987 and shall include homes placed in manufactured home parks or subdivisions, or homes not placed in such parks or subdivisions.

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Staff Explanation: Modified for consistency with the IRC Section R322.1.9 and to reference appropriate governing regulations.

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All new, replaced or substantially improved manufactured homes ~~to be placed or substantially improved within zones A1-30, and AE~~ shall be elevated on a permanent foundation such that the ~~lowest floor~~bottom of the frame of the manufactured home is three (3) feet at or above the base flood elevation or elevated to thirteen (13) feet using NAVD88, whichever is higher and be securely anchored to an adequately anchored foundation system in accordance ~~with Section 40-29-10 of the South Carolina Manufactured Housing Board Code of State Regulations, Chapter 79,~~ as amended.

- (d) *Recreational vehicles.* Recreational vehicles placed on sites shall either be on site for fewer than one hundred eighty (180) consecutive days or must be fully licensed and ready for highway use.

A recreational vehicle is ready for highway use if it is on wheels or jacking system, attached to the site only by quick-disconnect type utilities and security devices; and has no permanently attached additions.

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Staff Explanation: FEMA recently updated the policy regarding agricultural and accessory structures and the State Coordinator's office is requiring that Town modify this language for consistency with the updated requirements. This requirement does not change the way these structures are currently permitted by the Town.

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- (e) *Accessory structures.* ~~Accessory structures must be elevated to the base flood elevation or meet the requirements of section 15-9-312(f).~~

~~Accessory structures shall be placed on the building site so as to offer the minimum resistance to the flow of floodwaters and shall be firmly anchored to prevent flotation, collapse, or lateral~~



~~movement of the structure. All service facilities, such as electrical, shall be installed in accordance with section 15-9-311(d).~~

~~(1) If the size of an accessory structure is smaller than one-story and 600 square feet, then the following criteria shall be met:~~

~~a. Accessory structures shall not be used for any uses other than the parking of vehicles and storage.~~

~~b. Accessory structures shall be designed to have low flood damage potential.~~

~~c. Accessory structures shall be constructed and placed on the building site so as to offer minimum resistance to the flow of floodwaters.~~

~~d. Accessory structures shall be firmly anchored to prevent flotation, collapse and lateral movement of the structure.~~

~~e. All service facilities shall be elevated as follows:~~

~~1. In the special flood hazard area, equipment servicing the structure shall be elevated to the base flood elevation plus one foot, or~~

~~2. Outside of the special flood hazard area, equipment servicing the structure shall be located no lower than the highest adjacent grade.~~

~~f. Accessory structures shall be built with flood resistance materials in accordance with the most recent addition of Technical Bulletin 2, Flood Damage-Resistant Materials Requirements, which is available from the Federal Emergency Management Agency. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials, and~~

~~g. Openings to relieve hydrostatic pressure during a flood shall be provided below base flood elevation in conformance with 15-9-312(f).~~

~~(2) If the size of an accessory structure is larger than one-story and 600 square feet, then the following criteria shall be met:~~

~~a. All service facilities shall meet the requirements of section 15-9-311(d), and~~

~~b. Residential accessory structures must meet the requirements of section 15-9-312(a), or~~

~~c. Nonresidential accessory structures must meet the requirements of section 15-9-312(b).~~

(f) *Enclosures below lowest floor.*

(1) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

(2) Designs for meeting this requirement must either be certified by a registered professional South Carolina engineer or architect or must meet or exceed the following minimum criteria:

a. A minimum of two (2) openings, each on a separate building face, shall be provided. These openings should have a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding.

b. The bottom of all openings shall be no higher than one (1) foot above grade.

c. Openings may be equipped with screens, louvers or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(3) Doors and windows are not to be considered as a part of the minimum requirement.

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Staff Explanation: Removed second sentence because it created a circular reference.

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- (4) Uses below the base flood elevation are restricted to parking, limited storage and building access. ~~Enclosed areas below base flood elevation must comply with [subsection] (f)(1) above.~~
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Staff Explanation: Removed reference to partitioning for clarification as the area cannot be finished, but separation between permitted uses is allowed.

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- (5) The interior portion of such enclosed areas shall not be finished ~~or partitioned into separate rooms~~, must be void of utilities except for essential lighting as required for safety, and cannot be temperature controlled.
- (6) All construction materials below the required lowest floor elevation specified in the specific standards outlined in section 15-9-312(a), (b), (c) and (e) shall be of flood-resistant materials.
- (g) *Fill*. If fill is the only alternative to raising the building to meet the residential and non-residential construction requirements of section 15-9-312(a) and (b), an applicant shall demonstrate that the amount of fill used will not affect the flood storage capacity. The following provisions shall apply to all fill placed in the special flood hazard area:
- (1) Fill shall consist of suitable compact soil or small rock materials only. Sanitary landfills shall not be permitted.
  - (2) Uncontained fill shall extend laterally no less than five (5) feet beyond the building line at all points.
  - (3) Fill shall be used only to the extent to which it does not adversely affect adjacent properties.
  - (4) Fill slopes shall be no steeper than allowed by acceptable engineering standards for the type of fill material used.
  - (5) Nonresidential sites shall not be elevated with fill material to an average height greater than three (3) feet above existing grade with the exception of critical facilities.

( [Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

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Staff Explanation: Added reference to Coastal A zones as these are new zones on the map, which are regulated the same as Zone VE in the Building Code.

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Sec. 15-9-313. - Special standard for construction in coastal high hazard areas (zones ~~V<sub>1</sub>~~ ~~and~~ VE and Coastal A).

Located within the special flood hazard areas are areas known as coastal high hazard areas (VE and coastal A zones). These coastal high hazard areas have special flood hazards associated with high-velocity waters from tidal surge and hurricane wave wash and therefore the following special construction standards shall apply in the coastal high hazard areas as determined by the town manager or designee.

- (a) All new construction and substantial improvements shall be located landward of the reach of the mean high tide.
- 

Staff Explanation: Staff is proposing to raise the required lowest floor requirement for all V Zone construction to the higher of three feet above the base flood elevation or 13' above mean sea level. The

update FIRMS show minimal property remaining in zone V such that there is no distinction between residential or nonresidential construction.

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- (b) All new construction and substantial improvements shall be elevated so that the bottom of the lowest horizontal supporting member is located no lower than three (3) feet ~~one (1) foot~~ above the base flood elevation level, or thirteen (13) feet above mean sea level using NAVD88, whichever is higher, with all space below the lowest supporting member free of obstruction and open so as not to impede the flow of the water, except as provided for breakaway walls in subsection (i), below.
  - (c) All new construction and substantial improvements shall be securely anchored on pilings or columns.
  - (d) The pile or column foundation and structure attached thereto shall be designed and anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. (Windloads will comply with the latest edition of the International Building Code, with amendments, that has been adopted by the South Carolina Building Codes Council.) The waterloads are those associated with the base flood.
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Staff Explanation: Section (e) was modified for consistency with the IRC and IBC as ASCE 24 is the standard for construction in Coastal High Hazard Areas and Section (f) was removed to avoid conflict with section (e).

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- (e) A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with the most recent edition of ASCE 24 ~~accepted standards of practice~~ for meeting the provisions of paragraphs (b) through (d) of this section.
  - ~~(f) Pilings or columns used as structural support shall be spaced so that when measured perpendicular to the general direction of flood flow shall not be less than eight (8) feet apart at the closest point.~~
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Staff Explanation: Added for consistency with state model ordinance.

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- (g) There shall be no fill used as structural support. Non-compacted, non-structural fill may be used under or around an elevated building provided that it is beach compatible sand and no greater than 18 inches in depth.
- (h) There shall be no alteration of primary sand dunes which would increase potential flood damage.
- (i) Breakaway walls shall be allowed below the base flood elevation provided they are not part of the structural support of the building and are designed so as to break away, under abnormally high tides or wave action, without damage to the structural integrity of the building on which they are to be used. Breakaway walls shall be open lattice work or screening only.
- (j) If breakaway walls are utilized, such enclosed space shall not be used for human habitation. The enclosed areas may only be used for parking of the vehicles, building access or limited storage.
- (k) Reserved.
- (l) Manufactured homes to be placed in VE or coastal A zones shall meet the same standards as conventional housing; i.e., meet the provisions at section 60.3(e)(3), (4), (5), (6), and (7) of NFIP criteria, as required by this section.

- (m) Recreational vehicles may be permitted in VE or coastal A zones provided that the zoning of the property allows for recreational vehicle parks as a principal use and they meet the recreation vehicle criteria of section 15-9-312(d).
- (n) Accessory structures to be placed in VE or coastal A zones shall meet the same standards as conventional housing as required by this section.

( [Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

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Staff Explanation: Standards for Areas of Shallow Flooding (AO zones) as required by the State Coordinator's office. The language is slightly modified from the State Model Ordinance.

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Sec. 15-9-314. - Special standard for construction in areas of shallow flooding (zone AO).

Located within the special flood hazard areas are areas known as areas of shallow flooding (AO zone). The following provisions shall apply within such areas:

- (a) All new construction and substantial improvements of residential structures shall have the lowest floor elevated to at least as high as the depth number specified on the Flood Insurance Rate Map, in feet, above the highest adjacent grade, or thirteen (13) feet above mean sea level using NAVD88, whichever is higher.
- (b) All new construction and substantial improvements of nonresidential structures shall:
  - (1) Have the lowest floor elevated to at least as high as the depth number specified on the Flood Insurance Rate Map, in feet, above the highest adjacent grade or eleven (11) feet above mean sea level using NAVD88, whichever is higher, or
  - (2) Be completely floodproofed together with attendant utility and sanitary facilities to or above the depth number so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- (c) All structures on slopes must have drainage paths around them to guide water away from the structures.

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Staff Explanation: Procedure added for Appeal. The State Coordinator's office required that we add a definition for *Appeal*, so Staff also added appeal procedure.

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ARTICLE 4. -- VARIANCES AND APPEALS

Sec. 15-9-411. - Requirements for variances.

Upon the submission of a written application to the town construction board of adjustments and appeals, a variance may be granted permitting the new construction or substantial improvement of structures with a lowest floor elevation, lower than regulatory flood elevation if one (1) of the following are met:

- (a) A historical structure upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

- (b) Development necessary to conduct a functionally dependent use, provided the criteria of this article are met, no reasonable alternative exist, and the development is protected by methods that minimize flood damage and create no additional threat to public safety.
- (c) Wet floodproofing of an agricultural structure provided it is used solely for agricultural purposes. In order to minimize flood damages during the base flood and the threat to public health and safety, the structure must meet all of the conditions and considerations of section 15-9-312(f), this section, and the following standards:
  - (1) Use of the structure must be limited to agricultural purposes as listed below:
    - a. Pole frame buildings with open or closed sides used exclusively for the storage of farm machinery and equipment;
    - b. General-purpose barns for the temporary feeding of livestock that are open on at least one (1) side;
    - c. For livestock confinement buildings, poultry houses, dairy operations, and similar livestock operations, variances may not be issued for structures that were substantially damaged. New construction or substantial improvement of such structures must meet the elevation requirements of section 15-9-312(f) of this chapter.
  - (2) The agricultural structure must be built or rebuilt, in the case of an existing building that is substantially damaged, with flood-resistant materials for the exterior and interior building components and elements below the base flood elevation.
  - (3) The agricultural structure must be adequately anchored to prevent flotation, collapse, or lateral movement. All of the structure's components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, hydrodynamic, and debris impact forces. Where flood velocities exceed five (5) feet per second, fast-flowing floodwaters can exert considerable pressure on the building's enclosure walls or foundation walls.
  - (4) The agricultural structure must meet the venting requirement of section 15-9-312(f) of this chapter.
  - (5) Any mechanical, electrical, or other utility equipment must be located above the base flood elevation, plus any required freeboard, or be contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with section 15-3-311(d) of this chapter.
  - (6) Major equipment, machinery, or other contents must be protected. Such protection may include protective watertight floodproofed areas within the building, the use of equipment hoists for readily elevating contents, permanently elevating contents on pedestals or shelves above the base flood elevation, or determining that property owners can safely remove contents without risk to lives and that the contents will be located to a specified site out of the floodplain.

( [Ord. No. 2019-03](#) , § 1(Att. 1), 2-19-19)

#### Sec. 15-9-412. - Required findings.

If the proposed new construction or substantial improvement meets one (1) or more of the requirements in section 15-9-411, a variance may be granted if the town construction board of adjustment and appeals determines and expresses in writing all of the following findings:

- (a) Good and sufficient cause exists for the granting of the variance.
- (b) Failure to grant the variance would result in exceptional hardship to the applicant.
- (c) The issuance of the variance would not result in increased flood heights, additional threats to public safety or extraordinary public expense.

(d) The variance would not have the effect of nullifying the intent and purpose of the chapter.

( [Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-413. - Hearing.

- (a) All applications for variances shall be heard by the construction board of adjustments and appeals.
- (b) Prior to the granting of a variance the construction board of adjustments and appeals must find that justifications exist in accordance with the terms of this chapter. These findings together with the granting of a variance, shall be reduced to writing, and may be a part of the public record. All variances shall pertain to the particular parcel of land and apply only to the proposed structure set forth in the variance and application.
- (c) Such variance shall be freely transferable with the land and shall not be personal to the applicant.
- (d) Unless otherwise provided therein, a variance shall be valid for a period of one (1) year after the date of its issuance. If construction has not commenced pursuant thereto within such time, said variance shall become void. Lapse of a variance by the passage of time shall not preclude subsequent application for variance.
- (e) No variance except herein specifically permitted may be granted from the provisions of this chapter. The variance procedures herein provided shall be the exclusive method for obtaining variances under the provisions herein.

( [Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-414. - Fee.

Each written application for a variance shall be accompanied by a fee of seventy-five dollars (\$75.00). Such application shall reflect the type of structures for which a variance is sought, the size of such structures, the approximate location upon the parcel and intended use thereof and the reasons for which the variance is being sought.

( [Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-415. - Notice of possible increased insurance cost.

Any applicant to whom a variance is granted shall be given notice that the proposed structure will be located in the floodprone area. The structure will be permitted to be built with a lowest flood elevation below the regulatory flood elevation, and the cost of flood insurance will be commensurate with the increased risk resulting from the reduced first floor elevation.

( [Ord. No. 2019-03](#), § 1(Att. 1), 2-19-19)

Sec. 15-9-416. – Requirements for appeals

The town construction board of adjustments and appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the local floodplain administrator in the enforcement or administration of this division; provided, however, that, the person aggrieved requests a hearing before the town construction board of adjustment and appeals.

**AN ORDINANCE TO AMEND TITLE 15 CHAPTER 9 OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, TO UPDATE SPECIFIC PROVISIONS RELATED TO FLOOD DAMAGE CONTROLS. THIS AMENDMENT INCLUDES REVISED LANGUAGE AND DEFINED TERMS TO BE CONSISTENT WITH THE NATIONAL FLOOD INSURANCE PROGRAM REGULATIONS 44 CFR PARTS 59 AND 60, AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, in 1983, the Town Council of the Town of Hilton Head Island, South Carolina adopted the Municipal Code of the Town of Hilton Head Island; and

**WHEREAS**, the Town of Hilton Head Island Flood Insurance Rate Maps (FIRMs) have been updated by the Federal Emergency Management Agency (FEMA); and

**WHEREAS**, flood hazard areas and other areas of the Town are subject to periodic inundation resulting in property loss, economic disruption and health and safety hazards; and

**WHEREAS**, this Ordinance takes strides to reduce flooding risk in adaptive and innovative ways to protect citizens and build resilience; and

**WHEREAS**, the Public Planning Committee met on February 25, 2021 and voted to recommend that Town Council approve the proposed amendments; and

**WHEREAS**, the Town Council now finds that, upon further review, it is in the public interest to approve the proposed amendments to Title 15; Chapter 9 of the Municipal Code.

**NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND IT IS HEREBY ORDAINED BY THE AUTHORITY OF THE SAID COUNCIL:**

**Section 1. Amendment.** That the Municipal Code of the Town of Hilton Head Island, South Carolina, be, and the same hereby is, amended as shown on Exhibit “A” to this Ordinance. Newly added language is illustrated with double underline and deleted language is illustrated with ~~strikethrough~~.

**Section 2. Severability.** If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**Section 3. Effective Date.** This Ordinance shall be effective on March 23, 2021.

**PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.**

THE TOWN OF HILTON HEAD  
ISLAND, SOUTH CAROLINA

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John J. McCann, Mayor

ATTEST:

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Krista Wiedmeyer, Town Clerk

First Reading:

Second Reading:

APPROVED AS TO FORM:

---

Curtis L. Coltrane, Town Attorney

Introduced by Council Member:





# TOWN OF HILTON HEAD ISLAND

*Public Projects and Facilities Management Department*

**TO:** Josh Gruber, Interim Town Manager  
**VIA:** Shawn Colin, Interim Deputy Town Manager  
Diane Busch, Staff Attorney  
**FROM:** Jeff Buckalew, Town Engineer  
**DATE:** February 19, 2021  
**SUBJECT:** Santee Cooper Encroachment Agreement to permit Parking Area on Town land off Shelter Cove Lane

---

## **Recommendation:**

Staff recommends the Town enter into an Encroachment Agreement with Santee Cooper (South Carolina Public Service Authority), Central Electric Cooperative, Inc., and Palmetto Electric Cooperative, Inc. (see Exhibit A) which will allow staff to proceed towards the construction of a new parking area on Town land, but within the existing utility right of way, at 69 Shelter Cove Lane (PIN R520 012 00C 0002 0000) as shown in Exhibit B.

## **Summary:**

In its FY21 budget, the Town approved a CIP project to construct a new parking area and pathway enhancements in the Shelter Cove Lane area. As part of the design and permitting process, staff has been engaged with Santee Cooper to ensure the design is permissible to encroach into their existing powerline right of way easement. The design, which includes 53 new parking spaces, has been deemed acceptable by Santee Cooper staff, and now an encroachment agreement must be executed to bind the Town to the approved plans and other conditions. If the agreement is not signed, the project cannot move forward.

## **Background:**

The Town acquired this land already encumbered by the Santee Cooper right of way. The terms and the conditions of the encroachment agreement are typical and designed to legally preserve Santee Cooper's rights and abilities to access and maintain their overhead power transmission lines. This standard agreement dictates the design of the infrastructure improvements and basically holds them harmless from damage to Town improvements in the utility of their right of way and gives them the power to require the Town to relocate or modify the encroachments if they deem it necessary. The Town has entered into past similar agreements with Santee Cooper for capital improvement projects such as pathways.

**RESOLUTION 2021-\_\_**

**A RESOLUTION OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, TOWN COUNCIL AUTHORIZING THE TOWN MANAGER TO EXECUTE AN ENCROACHMENT AGREEMENT WITH SANTEE COOPER IN COORDINATION WITH CENTRAL ELECTRIC COOPERATIVE AND PALMETTO ELECTRIC COOPERATIVE TO ENCROACH ONTO THE POWER LINE EASEMENT LOCATED ON TOWN OWNED PARCEL R520 012 00C 0002 0000.**

**WHEREAS**, the Town of Hilton Head Island, South Carolina (hereinafter referred to as “Town”) is the owner of that certain piece, parcel or tract of land as described on Exhibit A attached hereto and identified as a portion of Beaufort County Tax Parcel Number R520 012 00C 0002 0000 (the “Property”).

**WHEREAS**, Palmetto Electric Cooperative (hereinafter referred to as “Palmetto”) is the grantee under that certain power line right of way easement as recorded in the Beaufort County SC, Register of Deeds office in Book 106 at Page 43 (The Hilton Head Agriculture Company).

**WHEREAS**, the Palmetto easement has been transferred to Central Electric Cooperative (hereinafter referred to as “Central”), and South Carolina Public Service Authority (hereinafter referred to as “Santee Cooper”) manages and oversees the Right of Way through a coordination agreement with Central and maintains the subject transmission line and associated easement.

**WHEREAS**, the Town intends to install a Town approved CIP project, which seeks to add 53 new parking spaces and pathway enhancements in the Shelter Cove Lane area; and

**WHEREAS**, through the design and permitting process, Town staff has determined to effectuate the plan, it is necessary to encroach upon the existing powerline easement; and

**WHEREAS**, and the proposed design and resulting encroachment are acceptable to Santee Cooper; and

**WHEREAS**, the proposed Santee Cooper Encroachment Agreement will include a hold harmless provision from damage to the Town improvements in exercising their maintenance responsibilities and further empowers them to require the Town to relocate or modify the encroachments at their discretion; and

**WHEREAS**, it is necessary to enter into an Encroachment Agreement with Santee Cooper, which will bind the Town to the approved plans and other conditions, in order to allow the project to move forward; and

**WHEREAS**, the Town has entered into past similar agreements with Santee Cooper for capital improvement projects such as pathways.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Hilton Head Island, SC:

1. The Town Manager is authorized to execute an Encroachment Agreement on behalf of the Town with Santee Cooper in coordination with Central and Palmetto to encroach upon the power line easement and in exchange, bind the Town to design plans and other conditions.

**PASSED AND APPROVED** by the Town Council of the Town of Hilton Head Island, SC this \_\_\_ day of March, 2021.

\_\_\_\_\_  
JOHN J. MCCANN, MAYOR

**ATTEST:**

\_\_\_\_\_  
KRISTA M. WIEDMEYER, TOWN CLERK

**APPROVED AS TO FORM:**

\_\_\_\_\_  
CURTIS COLTRANE, TOWN ATTORNEY

**INTRODUCED BY COUNCIL MEMBER:** \_\_\_\_\_

PREPARED BY AND AFTER  
RECORDING, RETURN TO:

Santee Cooper  
One Riverwood Drive

P. O. Box 29461  
Moncks Corner, SC 29461-6101

TMS# R520 012 00C 0002 0000

LINE: HILTON HEAD GAS TURBINES  
– MARKET PLACE 115 kV (TA8X034)

AUTHORITY DRAWINGS:  
5635-D02-5001

OWNER: TOWN OF HILTON HEAD  
ISLAND

## ENCROACHMENT AGREEMENT

**THIS ENCROACHMENT AGREEMENT** (the “Agreement”) is made as of this \_\_\_ day of \_\_\_\_\_, 2021 by and between **TOWN OF HILTON HEAD ISLAND**, a body politic formed pursuant to the laws of the State of South Carolina (“**TOWN**”), and **CENTRAL ELECTRIC COOPERATIVE, INC.**, a South Carolina non-profit entity formed pursuant to South Carolina Code Section 33-49-10, et. seq., (“Central”), **PALMETTO ELECTRIC COOPERATIVE, INC.**, a South Carolina non-profit entity formed pursuant to South Carolina Code Section 33-49-10, et seq., (“Palmetto”), and the **SOUTH CAROLINA PUBLIC SERVICE AUTHORITY**, a body corporate and politic organized and existing under the laws of the State of South Carolina (“Santee Cooper”).

### RECITALS

**WHEREAS**, TOWN is the owner of that certain piece, parcel or tract of land as described on Exhibit A attached hereto and identified as a portion of Beaufort County Tax Parcel Number #R520 012 00C 0002 0000 (the “Property”).

**WHEREAS**, Palmetto is the grantee under that certain power line right of way easement as recorded in the Beaufort County SC, Register of Deeds office in Book 106 at Page 43 (The Hilton Head Agriculture Company) (the “Right of Way”).

**WHEREAS**, the Palmetto easement has been transferred to Central, and Santee Cooper manages and oversees the Right of Way through a coordination agreement with Central and maintains the subject transmission line and associated easement.

**WHEREAS**, TOWN requests permission to install a drive aisle for the parking lot which is to be paved and the parking spaces are to be pervious pavers, a two (2') foot deep dry retention basin for the parking lot, a paved multi-use pathway, and landscaping (collectively, the “Encroachments”) off Shelter Cove Lane and within the Right of Way located in Beaufort County as shown on the drawing entitled “The Town of Hilton Head Island – Shelter Cove Parking and Pathway Improvements – Site Layout Plan - C1.3” dated September 25, 2020 attached as Exhibit B, also as shown on the drawing entitled,

“The Town of Hilton Head Island – Shelter Cove Parking and Pathway Improvements – Paving, Grading, and Drainage Plan – C2.3” dated September 25, 2020 attached as Exhibit C, and as shown on the drawing entitled “The Town of Hilton Head Island – Shelter Cove Parking and Pathway Improvements – Planting Plan – L-4.3” dated September 25, 2020 attached as Exhibit D, and prepared by Thomas and Hutton.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants set forth in this Agreement, the parties hereto, and their successors and assigns, agree as follows:

1. Santee Cooper hereby grants its consent to TOWN to construct and to maintain the Encroachments within the Right of Way. The parties agree that the Encroachments are located on the property between Santee Cooper TEFIS Numbers 139065 and 139066. No Encroachments will come within fifty feet (50') of any pole, guy, or anchor except for the approved variance.
2. TOWN acknowledges that the construction and maintenance of the Encroachments shall not raise the ground elevation within the Right of Way to such an extent as to violate the clearance requirements set forth by the National Electrical Safety Code and Santee Cooper. **The original grade will be restored following construction.** Any underground Encroachments which crosses the Right of Way in a perpendicular manner must be buried a minimum of thirty-six (36") inches deep within the Right of Way and must be marked in a clear and conspicuous manner. No part of any perpendicular Encroachments will be constructed within fifty feet (50') of a pole, guy wire, or guy wire anchor. TOHHI shall not impede access to any pole, guy or anchor at any time during construction or maintenance.
3. TOWN shall notify Santee Cooper's encroachment supervisor at (843) 761-8000, ext. 5327 and Santee Cooper's transmission crew supervisor at (843) 761-8000 ext. 5454, two (2) weeks prior to construction within the Right of Way. TOWN shall notify Santee Cooper's encroachment supervisor at (843) 761-8000 ext. 5327 upon completion of the Encroachments.
4. In the event additional utilization of the Right of Way is needed by Santee Cooper, Santee Cooper shall provide written notification to TOWN of the need for additional utilization, and TOWN shall relocate or modify the Encroachments within ninety (90) days, at its sole cost and expense.
5. In the event TOWN has either (i) not started construction on the herein authorized improvements within two (2) years from the date of this Agreement, or (ii) if TOWN has not completed the authorized improvements within two (2) years from the date of this Agreement, then this Agreement shall be null and void and of no further consequence.

6. TOWN will be responsible for locating all underground utilities prior to commencement of work. If, during trenching or boring operations, TOWN severs any transmission counterpoise (ground wire running parallel within the Right of Way), TOWN will leave the severed ends exposed above ground, mark the location with flagging, and notify the Santee Cooper transmission crew supervisor at (843) 761-8000 ext. 5454.
7. Santee Cooper shall not be responsible for any property damage to the Encroachments caused by any work it performs within the Right of Way. In the event TOWN wishes to replace any part of the Encroachments that have been removed or disrupted, TOWN shall obtain Santee Cooper's prior written consent, and, if so granted, shall perform such work at TOWN's sole cost and expense and shall diligently pursue any necessary repairs in an expedient manner so as to not disrupt Santee Cooper's ability to traverse or utilize the Right of Way.
8. All occupancy or use of any part of the Right of Way shall be at the sole expense of TOWN, which shall not assign or in any way alienate any rights or privileges granted in this Agreement without the prior written consent of Santee Cooper.
9. TOWN acknowledges and agrees that Santee Cooper shall not assume any liability or responsibility for any claims or actions arising as a result of the actions or omissions of TOWN. TOWN will be responsible for all such claims or actions within the limitations of the S.C. Tort Claims Act.
10. Santee Cooper only grants consent to construct and maintain the Encroachments in the Right of Way to the extent Santee Cooper has rights to the Right of Way. Santee Cooper makes no warranty whatsoever as to its title or rights to the Right of Way.
11. The exercise of any rights or privileges conferred by this Agreement shall constitute acceptance of the terms of this Agreement. Moreover, the persons executing this Agreement hereby warrant that they are duly authorized to execute this Agreement on behalf of the parties and have the full authority to bind the parties to this Agreement.
12. **TOWN agrees to caution all persons associated with the construction or maintenance of the Encroachments of the very high voltage associated with the overhead transmission lines within the Right of Way. No booms, cranes or other equipment shall be brought closer than fifteen feet (15') to the energized conductor.**
13. Santee Cooper reserves all rights it may have in and to the Right of Way by virtue of conveyance, statute, regulation, law, or equity.
14. TOWN agrees not to plant any vegetation within the Right of Way without prior written consent from Santee Cooper.

15. The easements, rights and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.
16. This Agreement shall be governed by the laws of the State of South Carolina. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument. This Agreement supersedes any and all prior agreements, either written or verbal, and represents the total understanding between the parties.

*Signatures appear on the following pages*

DRAFT

Signed, sealed and delivered in the presence of:	<b>CENTRAL ELECTRIC POWER COOPERATIVE, INC</b> , a South Carolina non-profit entity formed pursuant to South Carolina Code Section 33-49-10, et. seq.,
Print Name: _____ Witness #1	By: _____ Name: Cole Price
Print Name: _____ Witness #2	Its: Vice President, Member Services

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Personally appeared before me the undersigned witness who being duly sworn deposes and says that he/she saw the within named Central Electric Power Cooperative, Inc. by, Cole Price, its Vice President, Member Services, sign, seal, and as its act and deed deliver the foregoing instrument for the uses and purposes therein mentioned, and that he/she, together with \_\_\_\_\_ (witness #2), the other witness subscribed above, witnessed the execution thereof.

Witness is not a party to or a beneficiary of the transaction.

\_\_\_\_\_  
(Witness #1 sign here)

Sworn to and subscribed before me this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public  
Notary Public for \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
[NOTARIAL STAMP SEAL]



Signed, sealed and delivered in the presence of:	<b>PALMETTO ELECTRIC COOPERATIVE, INC.,</b> a South Carolina non-profit entity formed pursuant to South Carolina Code Section 33-49-10, et. seq.,
Print Name: _____ Witness #1	By: _____  Name: Wilson D. Saleeby
Print Name: _____ Witness #2	Its: Vice-President, Engineering and Operations

STATE OF SOUTH CAROLINA            )  
COUNTY OF \_\_\_\_\_                )

Personally appeared before me the undersigned witness who being duly sworn deposes and says that he/she saw the within named Palmetto Electric Cooperative, Inc. by, Wilson D. Saleeby, its Vice-President of Engineering and Operations, sign, seal, and as its act and deed deliver the foregoing instrument for the uses and purposes therein mentioned, and that he/she, together with \_\_\_\_\_ (witness #2), the other witness subscribed above, witnessed the execution thereof. Witness is not a party to or a beneficiary of the transaction.

\_\_\_\_\_  
(Witness #1 sign here)

Sworn to and subscribed before me this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public  
Notary Public for \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
[NOTARIAL STAMP SEAL]

<p>Signed, sealed and delivered in the presence of:</p> <p>_____</p> <p>Print Name: _____ Witness #1</p> <p>_____</p> <p>Print Name: _____ Witness #2</p>	<p><b>TOWN OF HILTON HEAD ISLAND</b>, a body politic formed pursuant to the laws of the State of South Carolina</p> <p>By: _____</p> <p>Name: Joshua A. Gruber</p> <p>Its: Interim Town Manager</p>
---	--

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

Personally appeared before me the undersigned witness who being duly sworn deposes and says that he/she saw the within named Town of Hilton Head Island, a body politic formed pursuant to the laws of the State of South Carolina, by \_\_\_\_\_, its duly authorized representative, sign, seal, and as its act and deed deliver the foregoing instrument for the uses and purposes therein mentioned, and that he/she, together with \_\_\_\_\_ (witness #2), the other witness subscribed above, witnessed the execution thereof. Witness is not a party to or a beneficiary of the transaction.

\_\_\_\_\_  
(Witness #1 sign here)

Sworn to and subscribed before me this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public  
Notary Public for \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
[NOTARIAL STAMP-SEAL]

<p>Signed, sealed and delivered in the presence of:</p> <p>_____</p> <p>Print Name: _____ Witness #1</p> <p>_____</p> <p>Print Name: _____ Witness #2</p>	<p><b>SOUTH CAROLINA PUBLIC SERVICE AUTHORITY</b>, a body corporate and politic organized and existing under the laws of the State of South Carolina</p> <p>By: _____</p> <p>Name: Vicky Budreau</p> <p>Its: Sr. Director, Wholesale/Industrial Customer Service</p>
---	--

STATE OF SOUTH CAROLINA            )  
COUNTY OF BERKELEY                )

Personally appeared before me the undersigned witness who being duly sworn deposes and says that he/she saw the within named South Carolina Public Service Authority, by, Vicky Budreau, its Sr. Director, Wholesale/Industrial Customer Service, sign, seal, and as its act and deed deliver the foregoing instrument for the uses and purposes therein mentioned, and that he/she, together with \_\_\_\_\_ (witness #2), the other witness subscribed above, witnessed the execution thereof. Witness is not a party to or a beneficiary of the transaction.

\_\_\_\_\_  
(Witness #1 sign here)

Sworn to and subscribed before me this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_  
[NOTARIAL STAMP-SEAL]

Exhibit A

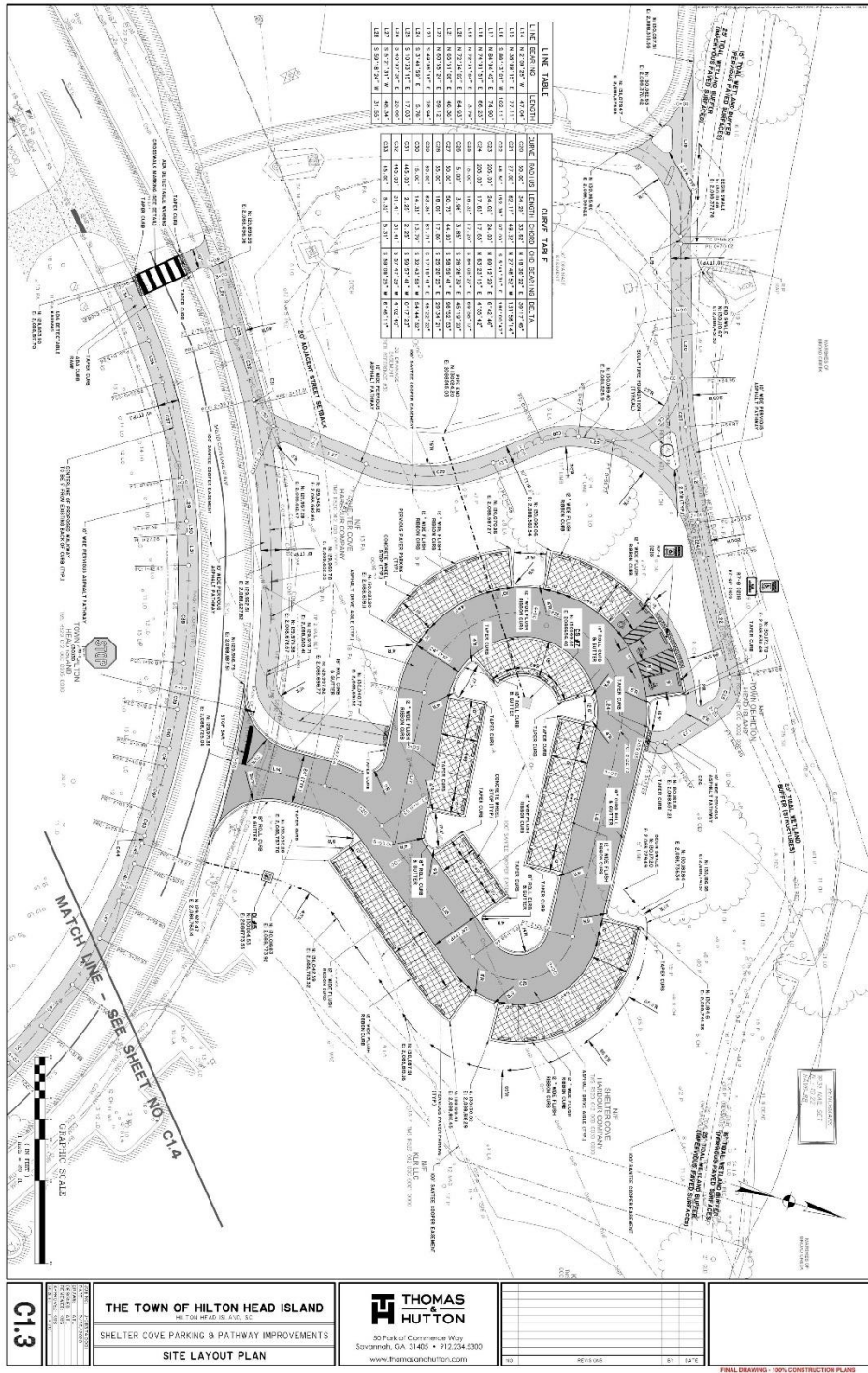
Property Legal Description

All that certain, piece, parcel or tract of land located within the Town of Hilton Head Island, Beaufort County, South Carolina, consisting of a total of approximately 4.45 acres, more or less, and all improvements thereon, if any, shown and designated as "Remainder of Revised Multi-Family Parcel" on that certain plat entitled "Boundary Reconfiguration of 4.45 Acre New Multi-Family Parcel #2 & 26.29 Cove Lane, a Portion of Shelter Cove Community Park, Hilton Head Island, Beaufort County, South Carolina", Sheet 2 of 2, prepared by Surveying Consultants, dated March 16, 2016, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 143 at Page 122.

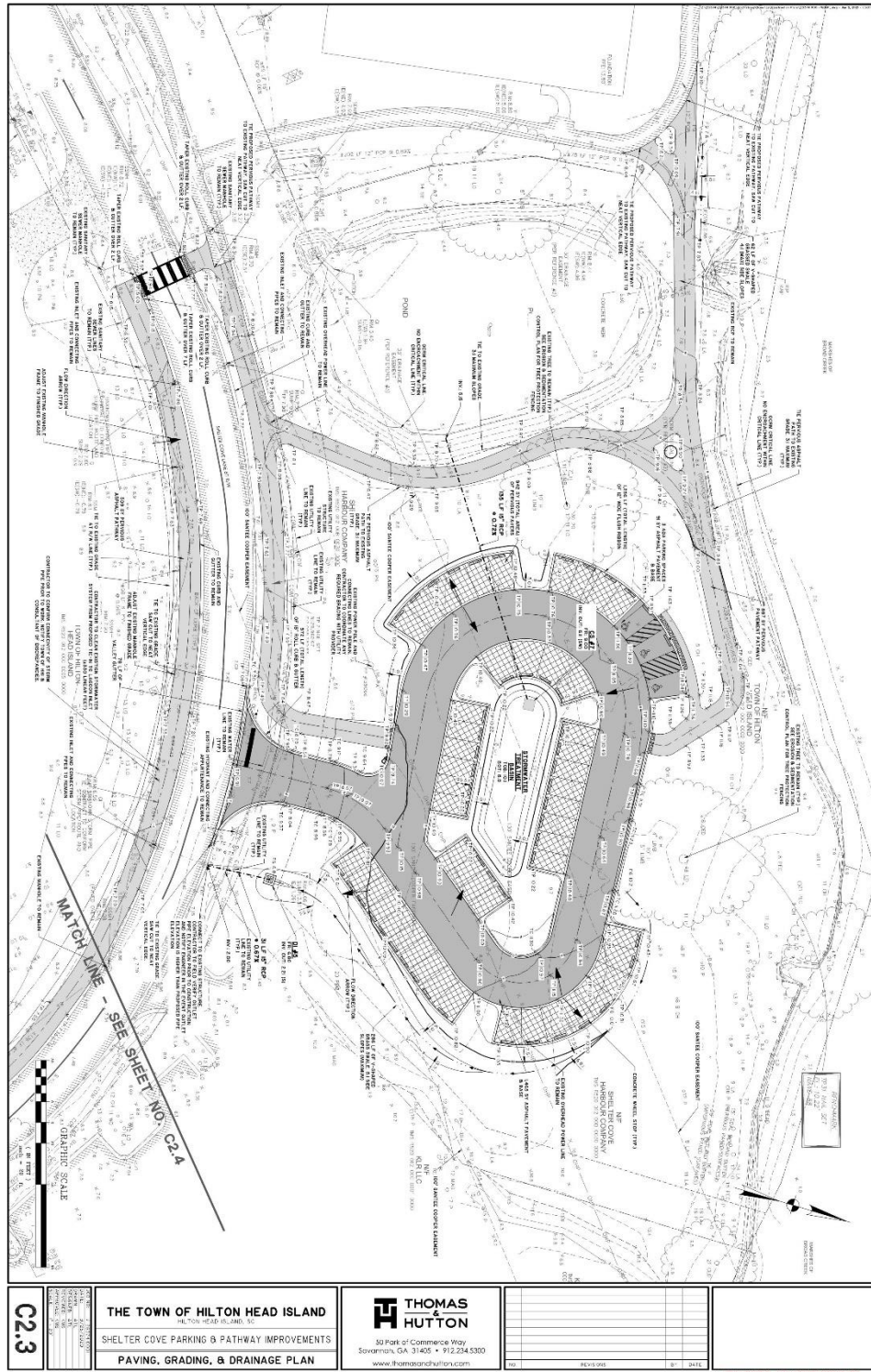
Derivation: This being a portion of the same property conveyed to Shelter Cove II, LLC to Town of Hilton Head Island, South Carolina by Deed dated April 12, 2016 and recorded in the Beaufort County Office of the Register of Deeds on April 22, 2016 in Deed Book 3477 at Page 3477.

TMS #R520 012 00C 0002 0000

# Exhibit B

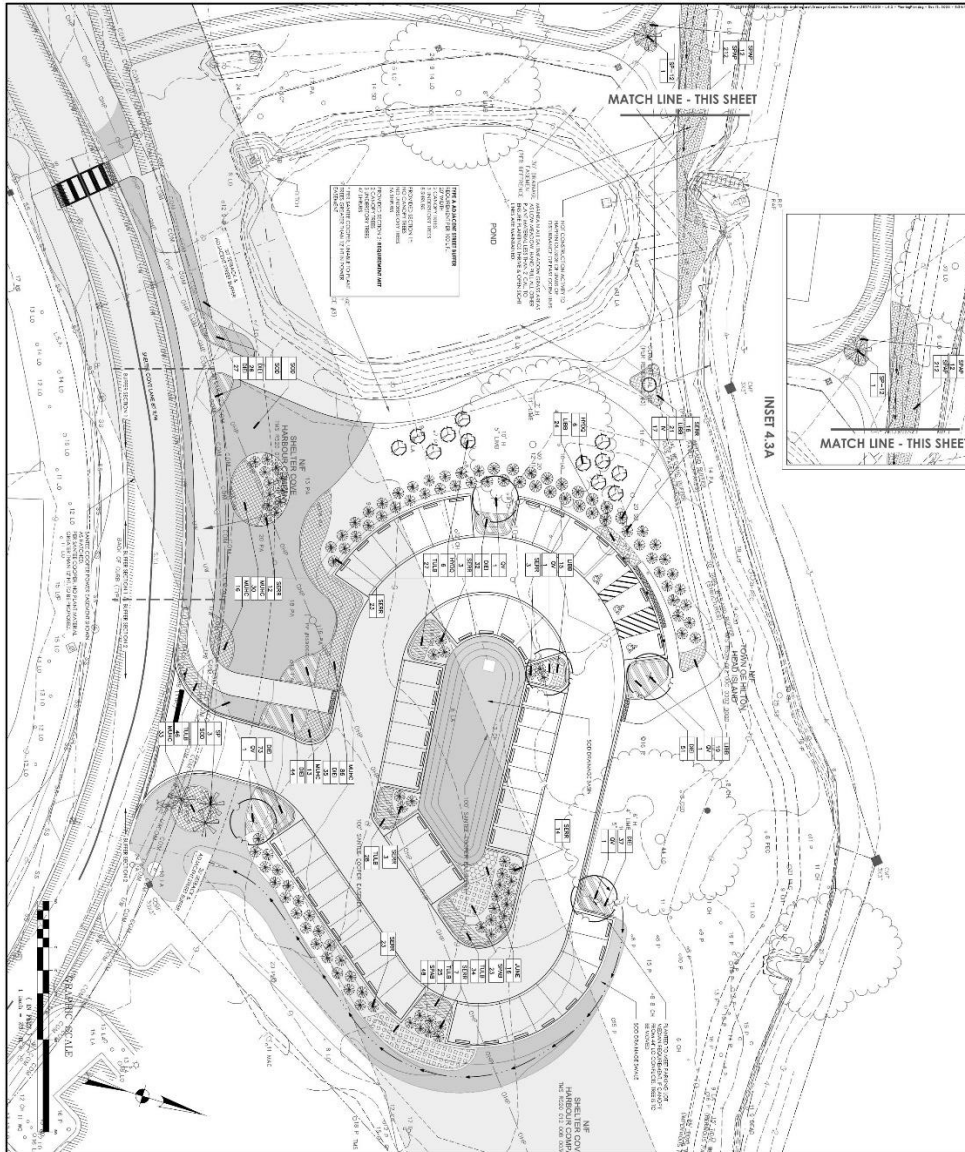


# Exhibit C





# Exhibit D



**PLANT SCHEDULE**

TREE	QTY	SCIENTIFIC NAME	COMMON NAME	PLANTING SIZE	SPACING	MISCELLANEOUS / REMARKS
1	10	Quercus virginiana	Live Oak	8" x 8" DB	30' x 30'	AS SPEC'D
2	10	Salix purpurea	Willow	2" x 2" DB	10' x 10'	AS SPEC'D
3	10	Salix purpurea	Willow	2" x 2" DB	10' x 10'	AS SPEC'D

SHRUB	QTY	SCIENTIFIC NAME	COMMON NAME	PLANTING SIZE	SPACING	MISCELLANEOUS / REMARKS
4	10	Quercus virginiana	Live Oak	8" x 8" DB	30' x 30'	AS SPEC'D
5	10	Salix purpurea	Willow	2" x 2" DB	10' x 10'	AS SPEC'D



**ORNAMENTAL GRASSES AND GROUNDCOVERS**

QTY	SCIENTIFIC NAME	COMMON NAME	PLANTING SIZE	SPACING	MISCELLANEOUS / REMARKS	
1	10	Quercus virginiana	Live Oak	8" x 8" DB	30' x 30'	AS SPEC'D
2	10	Salix purpurea	Willow	2" x 2" DB	10' x 10'	AS SPEC'D

<b>L4.3</b>	<p><b>THE TOWN OF HILTON HEAD ISLAND</b> 115 PARK HEAD ISLAND, SC</p> <p><b>SHELTER COVE PARKING &amp; PATHWAY IMPROVEMENTS</b></p> <p><b>PLANTING PLAN</b></p>	<p><b>THOMAS HUTTON</b></p> <p>50 Park of Commerce Way Savannah, GA 31406 • 912.234.5300</p> <p>www.thomashutton.com</p>	<p><b>- 100% CD SET -</b></p>
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# Legend

-  Subject Town Property
-  Parcels

**Proposed  
Pathway and Parking  
Improvements**

**Overhead Powerline  
and Easement**

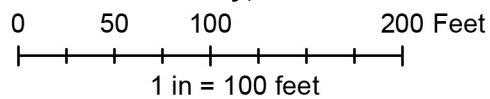
**Shelter Cove Ln.**

**Sheriff's Office**

**William Hilton Pkwy.**

## Exhibit B: Santee Cooper Agreement

February, 2021



Town of Hilton Head  
Island





# **TOWN OF HILTON HEAD ISLAND**

## *Community Development Department*

**TO:** Marc Orlando, ICMA~CM, *Town Manager*  
**VIA:** Jennifer Ray, *ASLA, Interim Community Development Director*  
**FROM:** Jayme Lopko, *AICP, Senior Planner*  
**CC:** Shawn Colin, *AICP, Interim Deputy Town Manager*  
**DATE:** February 18, 2021  
**SUBJECT:** Ford Shell Ring

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**Recommendation:** The Community Services and Public Safety Committee recommends Town Council authorize the Town Manager to execute a Joint Ownership and Operating Agreement related to development and operation of the Ford Shell Ring property.

The Community Services and Public Safety Committee met on January 25, 2021 and voted 4-0 to forward a recommendation to Town Council for approval.

**Summary:** The execution of a Joint Ownership and Operating Agreement will allow for public access to and interpretation of the Ford Shell Ring property.

**Background:** The Ford Shell Ring property was purchased jointly by the Town and Beaufort County in 2003.

Beaufort County allocated \$250k in Rural and Critical Lands Preservation bond funds for use toward capital improvements on the Ford Shell Ring property. The anticipated cost for planning for this project is \$50k with the remaining \$200k available for permitting and construction of improvements to the property.

The proposed improvements to the property are minor and contain only pervious materials. The entrance off Squire Pope Road will need to be widened to accommodate two-way traffic, which will include improvements to the existing drainage. The entrance will include a swing gate and a park sign similar in design to existing Town park signs. A small, gravel parking area lined with a split-rail fence will be installed upon entry to the property. A pedestrian access point with an information kiosk will be located at the trail head near the parking area. There is an existing trail around the Ford Shell Ring that will be brushed-back to allow for a 6-foot wide walking trail loop with interpretive and wayfinding signage along the trail.

The County will be responsible for all costs related to the planning and construction or repair of capital improvements on the property. The Town will be responsible for general maintenance including mowing and clearing of the trail and the opening and closing of the gate on the property.

**Attachment:**

*Attachment A: Draft Joint Ownership and Operating Agreement*



### **3. TERM**

The term of this Agreement shall cover a period of twenty-five (25) years, commencing on the entered upon date, unless terminated sooner pursuant to the provisions in this Agreement. The term of this Agreement may be extended for three (3) additional twenty-five (25) year terms upon the mutual agreement and written approval of both the County and Town.

### **4. USE OF PROPERTY**

The Property shall be used as a passive park and open space for passive recreation open to the public; and subject to all applicable County rules and regulations.

- a. **Access to Property.** The Property shall be open to the public seven (7) days a week from dawn to dusk. Pursuant to Beaufort County Ordinance 2018/53 Section 91-104, operating hours shall be posted at the Property's designated entrance.
- b. **Recreation Plan.** The Parties agree to develop the Property according to the passive recreation site plan, attached hereto and incorporated by reference as "Exhibit C".
- c. **Hilton Head Island Archaeological Society.** The County and Town will enter into a Use Agreement with the Hilton Head Island Archaeological Society ("HHIAS") whereby HHIAS will provide interpretive tours of the Property, monthly site inspections, litter pickups and minor trail maintenance.

### **5. ROUTINE AND MAJOR MAINTENANCE**

County shall be responsible for major maintenance of the Property. Major maintenance shall include but not be limited to repair of the fences, gates, parking area and interpretive signage now or hereinafter erected on the Property.

Town shall be responsible for routine maintenance of the Property. Routine maintenance shall include but not be limited to trail mowing, sign cleaning and opening/closing the entrance gate.

There will be no utilities on the property.

### **6. MAJOR ALTERATIONS AND CAPITAL IMPROVEMENTS**

Any major alterations or capital improvements on the Property shall be mutually agreed to by both Parties and shall be undertaken under the supervision of the County and their policies and procedures. The cost of such major repairs or capital improvements shall be the County's responsibility. For purposes of this Agreement the term "major alteration" or "capital improvement" shall be deemed to be any alteration or capital improvement having a cost or expense including all labor, materials, permits, and related items totaling in excess of \$2,500.00.

### **7. INSURANCE**

County and Town each shall at all times maintain a policy of general liability insurance with limits of liability of at least \$1,000,000.00 per occurrence. All policies of insurance shall identify the County and Town as named insureds.



- d. ***Binding Nature and Assignment.*** This Agreement shall bind the Parties and their respective successors in interest as may be permitted by law. Neither party to this Agreement may assign their rights or obligations arising under this Agreement without the prior written consent of the other party.
- e. ***No Third Party Beneficiaries.*** This Agreement is intended solely for the benefit of the Parties and not for the benefit of any other person or entity.
- f. ***Counterparts.*** This Agreement may be executed in multiple counterparts, and all such executed counterparts shall constitute the same agreement. The Parties agree that this Agreement may be communicated by use of a fax or other electronic means, such as electronic mail and the internet, and that the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed valid and binding upon the Parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents.
- g. ***Captions.*** The section headings appearing in this Agreement are for convenience of reference only and are not intended to any extent for the purpose, to limit or define the test of any section or any subsection hereof.
- h. ***Severability.*** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.
- i. ***Waiver.*** No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party waiving its rights. No delay or omission by either party to exercise any right or remedy it has under this Agreement shall impair or be construed as a waiver of such right or remedy. A waiver by either party of any covenant or breach of this Agreement shall not constitute or operate as a waiver of any succeeding breach of the covenant or of any other covenant.
- j. ***Applicable Law.*** This Agreement is enforceable in the State of South Carolina and shall in all respects be governed by, and constructed in accordance with, the substantive Federal laws of the United States and the laws of the State of South Carolina. Any claims for default, non-performance or other breach shall be filed in Beaufort County, South Carolina.

## 12. OTHER PROVISIONS

- a. ***Definition of Terms.*** For the purpose of this Agreement, all terms, specifically “passive park” and “passive recreation”, shall be defined pursuant to Beaufort County Ordinance 2018-53.
- b. ***Mutual Cooperation.*** The Parties shall cooperate with each other, and will use all reasonable efforts to cause the fulfillment of the terms and conditions of this Agreement.
- c. ***Liability.*** To the extent the law provides, each Party shall be responsible for its own acts, omissions and negligence and shall not be responsible for the acts, omission and negligence of the other Party. Neither party shall be liable to the other party for any claims, demands, expenses, liabilities or losses (including attorney's fees) which may arise out of any acts or failures to act by the other party, its employees or agents, in connection with the performance of services or responsibilities pursuant to this Agreement.

**IN WITNESS WHEREOF**, and in acknowledgement that the Parties hereto have read and understood each and every provision hereof, the Parties have caused this Agreement to be executed on the date first written above.

WITNESSES:

BEAUFORT COUNTY

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: Eric Greenway  
Title: Interim County Administrator

TOWN OF HILTON HEAD ISLAND

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: Marc Orlando, ICMA~CM  
Title: Town Manager

DRAFT

EXHIBIT A

12

STATE OF SOUTH CAROLINA )  
 ) INTER-GOVERNMENTAL AGREEMENT  
COUNTY OF BEAUFORT )

WHEREAS, the Town of Hilton Head Island, South Carolina, and Beaufort County, South Carolina, have entered into a contract to purchase certain real property lying and being on Hilton Head Island, South Carolina, and which is known and described as

R511 003 000  
G222 000

All that certain piece, parcel or tract of land, generally known and described as follows: All that certain piece, parcel and lot of land, situate, lying and being in the Town of Hilton Head Island, Beaufort County, South Carolina, containing 6.885 acres, more or less, and being shown and designated as "6.885 Acres" on that certain Plat entitled "PROPERTY OF THE HEIRS OF HENRY FORD, PORTIONS OF \* LOTS 57, 58, 59, & 60, COTTON HOPE PLANTATION, HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA" prepared by Niels Christensen, IV, R.L.S. No. 13162, dated October 13, 1992. It is further bounded and described as follows: commencing at an concrete monument along the right of way of Squire Pope Road and thence running along a curve having a chord length of 114.64, a chord bearing of S 39° 51' 11" W, and having a radius of 7832.60, to the point; and thence running N 39° 35' 06" E for a distance of 462.79 feet to a concrete monument; and, thence running N 42° 32' 47" W for a distance of 429.92 Feet to an iron pin; and thence running N 17° 36' 50" E for a distance of 193.91 feet to a point; and thence running S 27° 02' 26" W for a distance f 188.77 feet to a point; and, thence running S 50° 34' 04" W for a distance of 267.04 feet to a concrete monument; and, thence, running N 37° 56' 18" W for a distance of 168.07 feet to a concrete monument, and thence, running N 37° 55' 22" W for a distance of 332.75 feet to the initial concrete monument.

WHEREAS, the South Carolina Department of Natural Resources, by and through the "Heritage Trust" has expressed an interest in making a financial contribution toward the purchase price of the above described property, in exchange for the creation of a "Heritage Preserve" on all or a part of the property; and,

WHEREAS, the Town of Hilton Head Island, South Carolina and Beaufort County, South Carolina do not anticipate that the South Carolina Department of Natural Resources will take any action with respect to the property prior to the acquisition of the property; and,

WHEREAS, the Town of Hilton Head Island, South Carolina, and Beaufort County, South Carolina, have reached certain agreements concerning the potential participation by the South Carolina Department of Natural Resources, which agreements are set forth herein.

Now, therefore, for and in consideration of the sum of One and no/100 (\$1.00) Dollar, as well as the full and faithful performance of the promises, obligations and covenants set forth herein, as well as other good and valuable consideration, the receipt and sufficiency whereof is acknowledged, the Town of Hilton Head Island, South Carolina, and Beaufort County, South Carolina, agree as follows:

1. This agreement concerns the below described real property:

★ All that certain piece, parcel and lot of land, situate, lying and being in the Town of Hilton Head Island, Beaufort County, South Carolina, containing 6.885 acres, more or less, and being shown and designated as "6.885 Acres" on that certain Plat entitled "PROPERTY OF THE HEIRS OF HENRY FORD, PORTIONS OF LOTS 57, 58, 59, & 60, COTTON HOPE PLANTATION, HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA" prepared by Niels Christensen, IV, R.L.S. No. 13162, dated October 13, 1992. It is further bounded and described as follows: commencing at an concrete monument along the right of way of Squire Pope Road and thence running along a curve having a chord length of 114.64, a chord bearing of S 39° 51' 11" W, and having a radius of 7832.60, to the point; and thence running N 39° 35' 06" E for a distance of 462.79 feet to a concrete monument; and, thence running N 42° 32' 47" W for a distance of 429.92 Feet to an iron pin; and thence running N 17° 36' 50" E for a distance of 193.91 feet to a point; and thence running S 27° 02' 26" W for a distance of 188.77 feet to a point; and, thence running S 50° 34' 04" W for a distance of 267.04 feet to a concrete monument; and, thence, running N 37° 56' 18" W for a distance of 168.07 feet to a concrete monument, and thence, running N 37° 55' 22" W for a distance of 332.75 feet to the initial concrete monument (hereinafter, the Real Property).

2. Any and all decisions concerning Real Property including those related to the management, development, maintenance, use or sale or any part or all of the Real Property shall be made by joint agreement of the Town of Hilton Head Island, South Carolina, and Beaufort County, South Carolina.



Any and all such agreements shall be authorized by appropriate ordinances, resolutions or motions duly adopted by the Town Council for the Town of Hilton Head Island, South Carolina, and the County Council for Beaufort County, South Carolina.

3. All expenses related to the Real Property, and all revenue realized from the Real Property, including, but not limited to, any expenses or revenue caused or realized as a result of negotiations with the South Carolina Department of Natural Resources with respect to the creation of a "Heritage Preserve" on all or any part of the Real Property, shall be divided equally between the Town of Hilton Head Island, South Carolina, and Beaufort County, South Carolina.

4. The intended use of the Real Property is for a passive park and open space, development of interpretative displays regarding the shell ring and structure, and possible future development of a boat ramp or other public access to the water.

IN WITNESS WHEREOF, the Seller and the Purchaser, have, or have caused their duly authorized officers and representatives to execute this Agreement as of the date and year first above written.

**WITNESSES:**

**THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA**

*Jason Smith*

By: *Thomas D. Peeples*  
Thomas D. Peeples, Mayor

*Karen Knox*

Attest: *Stephen G. Riley*  
Stephen G. Riley, Town Manager

**WITNESSES:**

**BEAUFORT COUNTY, SOUTH CAROLINA**

*Wm. Weston J. Newton*

By: *Wm. Weston J. Newton*  
Wm. Weston J. Newton, Chairman

*Suzanne M. Rainey*

Attest: *Suzanne M. Rainey*  
Suzanne M. Rainey, Clerk

**EXHIBIT B**

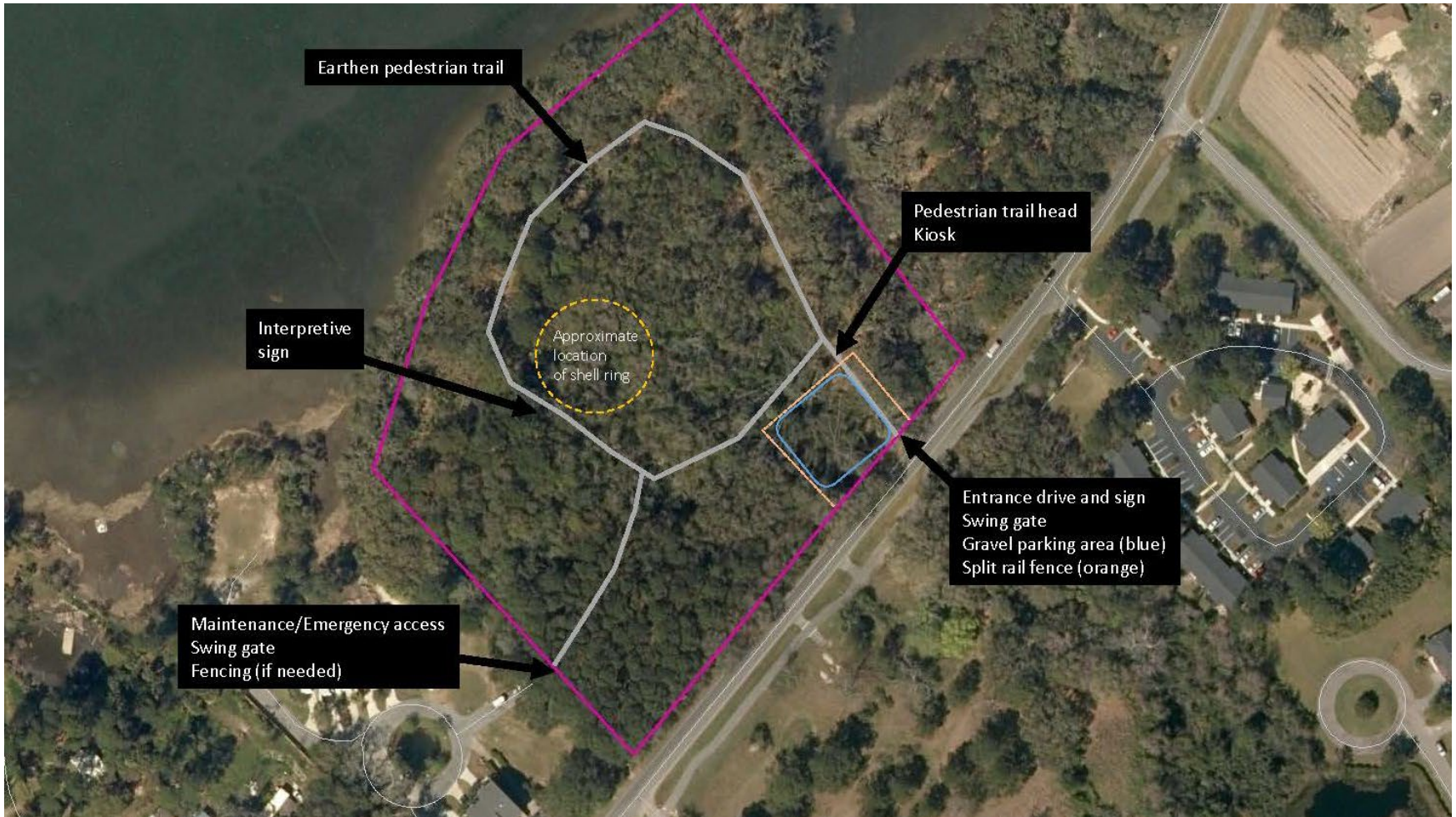
*Legal Description*

All that certain piece, parcel and lot of land, situate, lying and being in the Town of Hilton Head Island, Beaufort County, South Carolina, containing 6.885 acres, more or less, and being shown and designated as "6.885 Acres" on that certain Plat entitled "PROPERTY OF THE HEIRS OF HENRY FORD, PORTIONS OF LOTS 57, 58, 59, & 60, COTTON HOPE PLANTATION, HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA"\* prepared by Niels Christensen, IV, R.L.S. No. 13162, dated October 13, 1992. It is further bounded and described as follows: commencing at a concrete monument along the right of way of Squire Pope Road and thence running along a curve having a chord length of 114.64 feet, a chord bearing of S 39° 51' 11" W, and having a radius of 7832.60 feet, to the point; and thence running N 39° 35' 06" E for a distance of 462.79 feet to a concrete monument; and thence running N 42° 32' 47" W for a distance of 429.92 feet to an iron pin; and thence running N 17° 36' 50" E for a distance of 193.91 feet to a point; and thence running S 27° 02' 26" W for a distance of 188.77 feet to a point; and, thence running S 50° 34' 04" W for a distance of 267.04 feet to a concrete monument; and, thence, running N 37° 56' 18" W for a distance of 168.07 feet to a concrete monument, and thence, running N 37° 55' 22" W for a distance of 332.75 feet to the initial concrete monument.

\*Property ID (PIN): R511 003 000 0222 0000

**EXHIBIT C**

*Site Plan*





# TOWN OF HILTON HEAD ISLAND

## *Public Projects and Facilities Management Department*

**TO:** Josh Gruber, Interim Town Manager  
**VIA:** Shawn Colin, Interim Deputy Town Manager  
Diane Busch, Staff Attorney  
**FROM:** Jeff Buckalew, Town Engineer  
**COPY:** Curtis Coltrane, Town Attorney  
**DATE:** February 19, 2021  
**SUBJECT:** Agreements with Beaufort County regarding the Summit Drive Re-Alignment Project and a long-term commitment to provide Solid Waste and Recycling Service at the Summit Drive Convenience Center

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### **Recommendation:**

Staff recommends Town Council authorize the Town Manager to negotiate and enter into agreements with Beaufort County regarding the Summit Drive Re-Alignment project and a long-term commitment to provide solid waste and recycling service at the Summit Drive convenience center.

### **Summary:**

The County has enacted new decal-controlled operational procedures at its solid waste and recycling centers. To enhance operational functionality at the Hilton Head Island convenience center, staff has worked with Beaufort County staff to develop plans for roadway improvements. A Memorandum of Agreement (MOA) between the Town and County is needed to establish mutual aid parameters in the equitable transfer of land and rights and partnership in construction activities to complete the project. A Memorandum of Agreement between the Town and County is also needed regarding the County's long-term commitment to operate a solid waste and recycling center at 26 Summit Drive. In the Interim County Administrator's letter of February 9, 2021, to the Interim Town Manager (Exhibit A), the County confirms its positive intentions towards both of the aforementioned agreements.

### **Background:**

Last year, Beaufort County Council approved the extended funding of operations at the Hilton Head Convenience Center, with a condition that a decal screening system be implemented to better control customer visits and prevent contractor and non-resident dumping. This county-wide decal system went into effect on January 1, 2021, however there is road re-alignment work necessary for a more functional and efficient processing decals and queuing traffic for the Hilton Head Island Convenience Center. On October 2, 2020, the County Administrator first wrote the Town Manager requesting assistance from the Town on such a project. At its October 26, 2020 meeting, the Town's Community Services and Public Safety Committee unanimously approved that the project concept be moved forward to Town Council for approval and on November 17, 2020 Town Council unanimously approved the project concept. These approvals were made with the understanding and expectation that a subsequent budget amendment and agreement with the County were forthcoming. At its February

16, 2021 meeting Town Council approved a budget amendment which included funding for the Summit Drive Re-alignment project.

The project MOA shall define the terms and conditions of the project partnership between the Town and County, as well as land rights and transfers and each entities roles and responsibilities in implementing the project.

The MOA regarding a long-term commitment from the County to provide solid waste and recycling services at the Summit Drive convenience center is desired to justify the capital expenditures of the road project and to assure Hilton Head Island property owners of the long-term provision of this very important public service.



COUNTY COUNCIL OF BEAUFORT COUNTY  
OFFICE OF THE INTERIM COUNTY ADMINISTRATOR  
ADMINISTRATION BUILDING  
BEAUFORT COUNTY GOVERNMENT ROBERT SMALLS COMPLEX  
100 RIBAUT ROAD  
POST OFFICE DRAWER 1228

CHERYL H. HARRIS  
EXECUTIVE ASSISTANT

BEAUFORT, SOUTH CAROLINA 29901-1228  
TELEPHONE: (843) 255-2023  
FAX: (843) 255-9403  
[www.beaufortcountysc.gov](http://www.beaufortcountysc.gov)

ERIC GREENWAY  
INTERIM COUNTY ADMINISTRATOR

February 9, 2021

Mr. Joshua Gruber  
Interim Town Manager  
Town of Hilton Head Island  
1 Town Center Court  
Hilton Head Island, SC 29928

RE: Summit Drive Re-Alignment Project to Facilitate New Operational Procedures at the Hilton Head Island Convenience and Recycling Center

Dear Josh:

This letter is to confirm Beaufort County's intentions with regards to the Summit Drive Re-Alignment Project to facilitate new operational procedure at the Hilton Head Island Convenience and Recycling Center. Council approvals will be required, but please know that the County's intends to:

1. allow, for permitting and construction purposes, the Town or its contractor to enter upon County parcels, proposed right of way and easements and proceed with the work as shown on the construction plans by Infrastructure Consulting and Engineering, dated January 21, 2021,
2. convey two parcels of land (R510 008 000 0370 0000 and R510 008 000 0160 0000) and proposed right of way as shown on the plat by Surveying Consultants, dated January 27, 2021 to the Town for a nominal fee,
3. enter into a mutual aid Memorandum of Agreement specific to this project, and
4. enter into a Memorandum of Agreement regarding the County's long-term commitment to operate the convenience and recycling center located at 26 Summit Drive on Hilton Head Island.

Beaufort County recognizes and appreciates the Town of Hilton Head Island's cooperation and partnership on this very important and mutually beneficial project.

Sincerely,



Eric Greenway  
Interim County Administrator

EG:ch

cc: Jared Fralix, Assistant County Administrator – Engineering